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Earl Warren Oral History Project

THE ALAMEDA COUNTY DISTRICT ATTORNEYS OFFICE AND
THE CALIFORNIA CRIME COMMISSION

Miriam Feingold and Amelia Fry

Copy No. 1



Arthur H. Sherry

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PREFACE

The Earl Warren Oral History Project, a five-year project of the Regional Oral History Office, was inaugurated in 1969 to produce tape-recorded interviews with persons prominent in the arenas of politics, governmental administration, and criminal justice during the Warren Era in California. Focusing on the years 1925-1953, the interviews were designed not only to document the life of Chief Justice Warren but to gain new information on the social and political changes of a state in the throes of a depression, then a war, then a postwar boom.

An effort was made to document the most significant events and trends by interviews with key participants who spoke from diverse vantage points. Most were queried on the one or two topics in which they were primarily involved; a few interviewees with special continuity and breadth of experience were asked to discuss a multiplicity of subjects. While the cut-off date of the period studied was October, 1953--Earl Warren's departure for the United States Supreme Court--there was no attempt to end an interview perfunctorily when the narrator's account had to go beyond that date in order to complete the topic.

The interviews have stimulated the deposit of Warreniana in the form of papers from friends, aides, and the opposition; government documents; old movie newsreels; video tapes; and photographs. This Earl Warren collection is being added to The Bancroft Library's extensive holdings on twentieth century California politics and history.

The project has been financed by four outright grants from the National Endowment for the Humanities and by gifts from local donors which were matched by the Endowment. Contributors include the former law clerks of Chief Justice Earl Warren, the Cortez Society, many long-time supporters of "the Chief," and friends and colleagues of some of the major memoirists in the project. The Roscoe and Margaret Oakes Foundation and the San Francisco Foundation have jointly sponsored the Northern California Negro Political History Series, a unit of the Earl Warren Project.

Particular thanks are due the Friends of The Bancroft Library, who were instrumental in raising local funds for matching, who served as custodian for all such funds, and who then supplemented from their own treasury all local contributions on a one-dollar-for-every-three dollars basis.

The Regional Oral History Office was established to tape record autobiographical interviews with persons prominent in the history of California and the West. The Office is under the administrative supervision of James D. Hart, Director of The Bancroft Library.

Amelia R. Fry, Director
Earl Warren Oral History Project

Willa K. Baum, Department Head
Regional Oral History Office

1 March 1973
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EARL WARREN ORAL HISTORY PROJECT

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Arthur H. Sherry

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EARL WARREN ORAL HISTORY PROJECT

(California, 1926-1953)

Interviews Completed by January 1976

Single Interview Volumes

- A. Wayne Amerson, Northern California and Its Challenges to a Negro in the Mid-1900s. 1974 With an introduction by Henry Ziesenhenn
- Edwin L. Carty, Hunting, Politics, and the Fish and Game Commission. 1975
- C.L. Dellums, International President of the Brotherhood of Sleeping Car Porters and Civil Rights Leader. 1973 With an introduction by Tarea Pittman
- McIntyre Faries, California Republicans, 1934-1953. 1973
- Richard Graves, Theoretician, Advocate, and Candidate in California State Government. 1973
- Emily H. Huntington, A Career in Consumer Economics and Social Insurance. 1971 With an introduction by Charles A. Gulick, Professor of Economics, Emeritus
- Helen S. MacGregor, A Career in Public Service with Earl Warren. 1973 With an introduction by Earl Warren
- Richard Allen McGee, Participant in the Evolution of American Corrections: 1931-1973. 1975 With an introduction by Caleb Foote
- Donald McLaughlin, Careers in Mining Geology and Management, University Governance and Teaching. 1975 With an introduction by Charles Meyer
- Edgar James Patterson, Governor's Mansion Aide to Prison Counselor. 1975 With an introduction by Merrell F. Small
- Tarea Pittman, NAACP Official and Civil Rights Worker. 1974 With an introduction by C.L. Dellums
- Robert B. Powers, Law Enforcement, Race Relations: 1930-1960. 1971 With an introduction by Robert W. Kenny
- William Byron Rumford, Legislator for Fair Employment, Fair Housing, and Public Health. 1973 With an introduction by A. Wayne Amerson
- Arthur H. Sherry, The Alameda County District Attorney's Office and the California Crime Commission. 1976
- Merrell F. Small, The Office of the Governor Under Earl Warren. 1972

Paul Schuster Taylor, California Social Scientist.

Volume I, Education, Field Research, and Family. 1973 With an introduction by Lawrence I. Hewes, Fellow, Center for the Study of Democratic Institutions, Santa Barbara

Volumes II & III, California Water and Agricultural Labor. 1975 With introductions by Paul W. Gates and George M. Foster.

Multi-Interview Volumes

California State Finance in the 1940's. 1974

With an introduction by Stanley Scott, Assistant Director, Institute of Governmental Studies

Fred Links, An Overview of the Department of Finance.

Ellis Groff, Some Details of Public Revenue and Expenditure in the 1940s.

George Killion, Observations on Culbert Olson, Earl Warren, and Money Matters in Public Affairs.

A. Alan Post, Watchdog on State Spending.

Paul Leake, Statement on the Board of Equalization.

Earl Warren's Bakersfield. 1971

Maryann Ashe and Ruth Smith Henley, Earl Warren's Bakersfield.

Omar Cavins, Coming of Age in Bakersfield.

Francis Vaughan, School Days in Bakersfield.

Ralph Kreiser, A Reporter Recollects the Warren Case.

Manford Martin and Ernest McMillan, On Methias Warren.

Earl Warren and Health Insurance: 1943-1949. 1971

Russel VanArsdale Lee, M.D., Pioneering in Prepaid Group Medicine.

Byrl R. Salsman, Shepherding Health Insurance Bills Through the California Legislature.

Gordon Claycombe, The Making of a Legislative Committee Study.

John W. Cline, M.D., California Medical Association Crusade Against Compulsory State Health Insurance.

Earl Warren and the State Department of Mental Hygiene. 1973

Frank F. Tallman, M.D., Dynamics of Change in State Mental Institutions.

Portia Bell Hume, M.D., Mother of Community Mental Health Services.

Earl Warren and the State Department of Public Health. 1973

With an introduction by E.S. Rogers, M.D., Dean, UC School of Public Health, 1946-51.

Malcolm H. Merrill, M.D., M.P.H., A Director Reminisces.

Frank M. Stead, Environmental Pollution Control.

Henry Ongerth, Recollections of the Bureau of Sanitary Engineering.

Kent A. Zimmerman, M.D., Mental Health Concepts.

Lawrence Arnstein, Public Health Advocates and Issues.

The Governor and the Public, the Press, and the Legislature. 1973
Marguerite Gallagher, Administrative Procedures in Earl Warren's Office, 1938-1953.
Verne Scoggins, Observations on California Affairs by Governor Earl Warren's Press Secretary.
Beach Vasey, Governor Warren and the Legislature.

The Japanese-American Relocation Reviewed. 1974
With an introduction by Mike M. Masaoka, Former National Secretary and Washington Representative, Japanese American Citizens League.
Volume I Decision and Exodus (In process)
Volume II The Internment
Robert B. Cozzens, Assistant National Director of the War Relocation Authority.
Dillon S. Myer, War Relocation Authority: The Director's Account.
Ruth W. Kingman, The Fair Play Committee and Citizen Participation.
Hisako Hibi, paintings of Tanforan and Topaz camps.

Labor Looks at Earl Warren. 1970
Germaine Bulcke, A Longshoreman's Observations.
Joseph Chaudet, A Printer's View.
Paul Heide, A Warehouseman's Reminiscences.
U.S. Simonds, A Carpenter's Comments.
Ernest H. Vernon, A Machinist's Recollections.

Perspectives on the Alameda County District Attorney's Office. 1972
With an introduction by Arthur H. Sherry, Professor of Law
Volume I
John F. Mullins, How Earl Warren Became District Attorney.
Edith Balaban, Reminiscences about Nathan Harry Miller, Deputy District Attorney, Alameda County.
Judge Oliver D. Hamlin, Reminiscences about the Alameda County District Attorney's Office in the 1920's and 30's.
Mary Shaw, Perspectives of a Newspaperwoman.
Willard W. Shea, Recollections of Alameda County's First Public Defender.
Volume II
Richard Chamberlain, Reminiscences about the Alameda County District Attorney's Office.
Lloyd Jester, Reminiscences of an Inspector in the District Attorney's Office.
Beverly Heinrichs, Reminiscences of a Secretary in the District Attorney's Office.
Clarence Severin, Chief Clerk in the Alameda County District Attorney's Office.
Homer R. Spence, Attorney, Legislator, and Judge.
E.A. Daly, Alameda County Political Leader and Journalist.
John Bruce, A Reporter Remembers Earl Warren.
Volume III
J. Frank Coakley, A Career in the Alameda County District Attorney's Office.
Albert E. Hederman, Jr., From Office Boy to Assistant District Attorney.
Lowell Jensen, Reflections of the Alameda County District Attorney.
James H. Oakley, Early Life of a Warren Assistant.

Earl Warren and the Youth Authority. 1972 With an introduction by Allen F. Breed,
Director, California Youth Authority
Karl Holton, Developments in Juvenile Correctional Techniques.
Kenyon Scudder, Beginnings of Therapeutic Correctional Facilities.
Heman Stark, Juvenile Correctional Services and the Community.
Kenneth Beam, Community Involvement in Delinquency Prevention.

INTERVIEW HISTORY

Arthur H. Sherry, professor of law and criminology at the University of California at Berkeley, was interviewed for the Earl Warren Project of the Regional Oral History Office in order to capture his reminiscences of the Alameda County District Attorney's office in the 1930's and 1940's and of the California Special Crime Study Commission on Organized Crime.

Dates of
Interview Sessions: February 24, 1971; interviewer, Miriam Feingold
March 12, 1971; interviewers, Miriam Feingold and Amelia Fry
June 22, 1973; interviewer, Amelia Fry

Conduct of the
Interview: The interview sessions, each lasting about two hours, were held in Professor Sherry's office, School of Law building (Boalt Hall), Berkeley. Professor Sherry sat behind his large, tidy desk on which the microphone was placed. He listened intently to questions, or sometimes took his cue from the outline submitted before each session, then answered. His words flowed unhesitatingly, with an easy articulation that comes from a mind that can synthesize ideas rapidly. He followed the outline closely, frequently enriching his story with descriptions of cases and related events.

Editing: Editing of the transcribed, taped interview was done by the interviewers. Minor rearrangements of material were made to maintain continuity of the discussion without interrupting its informal quality. Professor Sherry very carefully reviewed the edited text, correcting several minor points and adding explanatory comments.

Narrative Account

of the
Interview: Since the inception of the Earl Warren Project, Arthur Sherry, as a professor of law and criminology, has served as one of its advisors and principal investigators, and has given the Project staff invaluable assistance. One of his contributions is the introduction he wrote to the three-volume collection of Project interviews on "Perspectives

of the Alameda County District Attorney's Office." He was therefore well acquainted with the purposes of the Project and gladly consented to be interviewed.

Arthur Sherry's career intersected Earl Warren's at several points. Their first and longest association was when Mr. Sherry served as a deputy district attorney in Warren's office. Later, in the 1940's, he served on Governor Warren's Special Crime Study Commission on Organized Crime.

Professor Sherry begins the interview with a careful account of how his grandparents came to California. He himself was born in 1908 in Berkeley and began his education in the Berkeley public schools. He attended high school and college at St. Mary's. It was a visiting speaker at St. Mary's College who interested him in law by making law "sound just one of the most difficult, awful things you could ever think of," a description the young Sherry found hard to believe. He enrolled at Boalt Hall and graduated in 1932.

Professor Sherry gives a vivid account of the problems that faced a young man just out of law school during the Depression. He picked up odd jobs in law whenever he could and, following the advice of an older colleague, eventually applied for a job at the Alameda County District Attorney's office. There were seldom vacancies, but Earl Warren had instituted a system of hiring deputies without pay until a spot opened up. In this way Arthur Sherry joined the staff in 1933.

In relating how he learned the office ropes, Professor Sherry draws a detailed picture of personnel training, a process he himself later supervised when Ralph Hoyt was district attorney. In late 1933, having completed his training, Sherry was transferred from the main office to the Oakland City Hall office. It was here that he stumbled into his first big case, an insurance fraud case -- a type of case then common -- and saw his name for the first time in the headlines.

As a result of his success with the insurance fraud case, Sherry was put in charge of the Berkeley prosecuting attorney's office. He gives a vivid account in the interview of his responsibilities

there, which included maintaining good relations with a difficult police chief and visiting the scenes of crimes at any hour of the day or night to collect statements. Professor Sherry describes several of the more important cases he handled there.

The descriptions of his work shed valuable light on the effectiveness of organization of the district attorney's office. He points out the educative value of the daily staff meetings, the important functions served by the inspectors, and the effect of Warren's procedural rules on the speed with which cases were tried.

In commenting on procedures of criminal investigation, Professor Sherry notes that Warren's office was "a long way ahead of Miranda." [Miranda v. Arizona re: right of accused to be informed of his rights] Warren insisted that deputies inform suspects of their right to see an attorney and their right to silence. Warren also did not approve of the use of hidden listening devices.

During his later years in the district attorney's office, Sherry assumed the job of legislative lobbyist in Sacramento, representing district attorneys statewide, a position previously held first by J. Frank Coakley, then Richard Chamberlain, then Cecil Mosbacher.

Professor Sherry describes the highlights of the more important cases during his years in the office. His comments range over graft and gambling cases, labor disputes, murder and kidnapping cases, and Japanese removal.

In concluding his remarks on the district attorney's office, Professor Sherry briefly evaluates Earl Warren as district attorney and compares the administration of Warren with that of Ralph Hoyt and J. Frank Coakley.

Turning his attention to the California Special Crime Study Commission on Organized Crime, Professor Sherry explains how it was first created in 1947 under authorization by the Penal Code. Its main target was organized crime in Southern California.

The Commission was part of Governor Earl Warren's attempt to standardize and coordinate law enforcement throughout the state.

The Commission, headed by Admiral Standley, rapidly outgrew its designation as a study body, and found itself an operational agency instead. It opened its doors in early 1948, and soon thereafter, Professor Sherry relates, began receiving rumors that the attorney general's office, under Frederick N. Howser, was extorting money from gamblers. Confronted with this information, Howser failed to take action, resulting in a series of prosecutions of the gamblers and of Howser's agents.

Professor Sherry first entered the work of the Crime Commission in late 1948, when he was persuaded by Governor Earl Warren and Warren Olney, the Crime Commission's counsel, to leave his post at the DA's office and become special prosecutor in Mendocino, California, in a slot machine racket protections prosecution of one of Howser's agents. The trial, "the Watergate of its time," as Professor Sherry describes it, lasted thirty days, and resulted in conviction. Professor Sherry describes Howser's indignant reaction, and his effort to sabotage the trial.

Shortly thereafter, in 1949, Professor Sherry relates, Warren Olney invited him to join the staff of the Commission, a position he accepted and held for almost two years. He describes the Commission's efforts to encourage local law enforcement agencies to prosecute law breakers uncovered by the Commission, and discusses how that body actually functioned. He also describes the resistance encountered in the state legislature to legislative attempts to curb gambling.

In describing the Commission's job, Professor Sherry relates several of his adventures, including the accidental discovery of Howser's "bag man;" plugging the leak from the Commission to the press; and uncovering falsification of records.

In assessing Howser's role in the crime commission, he describes Howser's background as a defense attorney

for underworld interests and relates the apprehension with which the law enforcement community viewed Howser's election. Professor Sherry relates how Howser recruited his organization, how it functioned, and how his deputies were retrained once he was out of office.

In discussing the Mafia and organized crime in California, Professor Sherry asserts that the Mafia is a fiction, and that organized crime is primarily controlled by individual groups with little relation to each other. He describes the Mickey Cohen and Dragna organizations in Southern California, noting that they resorted on occasion to "typical Mafia-type retaliation" murders.

Organized crime does, however, have an influence on elections, he says, although its exact impact is unknown because of the lack of campaign contribution disclosure laws in the past.

In assessing the impact of the Crime Commission, Professor Sherry relates that large scale gambling is now virtually unknown in California. Slot machines and rackets are gone, and off-track betting is now a relatively small operation. More important, gaming operators are small-time and unorganized.

In concluding his remarks, Professor Sherry describes the cooperation extended by the California Crime Commission to the Kefauver Committee, investigating organized crime nationwide.

A copy of the Final Report of the Special Crime Study Commission on Organized Crime, 1950, is filed with the copy of this interview in The Bancroft Library.

Miriam Feingold,
Interviewer

7 August 1973
Regional Oral History Office
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University of California at Berkeley

Arthur H. Sherry
Principal Investigator

BIOGRAPHY

Professor of Law, University of California, Berkeley

A.B. 1929, St. Mary's College

LL.B. 1932, University of California, Berkeley

Admitted to practice, California, 1932

U.S. Supreme Court, 1952

FCC, 1952

Deputy District Attorney, Alameda County, California, 1933-41

Assistant District Attorney, Alameda County, California, 1946-49

Assistant Counsel, California Crime Study Commission, 1949-51

Chief Assistant Attorney General California, 1951-53, 1959

Professor, University of California School of Law and School of
Criminology, since 1953.

Acting Dean, School of Criminology, 1960-61

Author, Manual Law of Arrest, 1957

Plan for Survey of Administration of Criminal Justice (with John
A. Pettis, Jr.) 1955

Member: American Society of Criminology, American Academy of
Forensic Sciences

Project Director, American Bar Foundation Survey of Administration
of Criminal Justice, 1953-57

U.S.A.F., 1942-1945

Chairman, California Advisory Committee on Criminal Statistics,
since 1954

Member, A.L.I. Model Penal Code Advisory Committee, 1956-62

ABF Special Committee on Administration of Criminal Justice, since 1958

Project Director, Revision of California Penal Code, since 1964

Arthur Harnett Sherry

The Tribune

PIEDMONT — A Mass will be said Thursday for Arthur Harnett Sherry, former University of California, Berkeley, professor of law and criminology and Alameda County deputy district attorney, who died yesterday. He was 76.

Sherry, a lifelong resident of the Bay Area who lived in Piedmont, died at Merritt Hospital of complications from a stroke he suffered five weeks ago. He had been in a coma since then.

A graduate of St. Mary's College in Moraga in 1929 and the University of California at Berkeley's Boalt Hall School of Law in 1932, Sherry served a long and distinguished career that spanned more than 50 years.

His friends included Chief Justice Earl Warren and former California Governor Edmund G. "Pat" Brown.

Sherry was a deputy district attorney for Alameda County in the 1930s and 1940s.

From 1948 to 1951, he served as special prosecutor and assistant counsel to the California Special Study Commission on Organized Crime.

Sherry also served as special prosecutor in an important organized crime case of the era, a slot-machine protection racket in Mendocino County that involved agents of the lieutenant governor.

He later became a member of the organized crime commission.

Sherry joined the UC faculty in 1953.

Adrian Kragen, a UC Berkeley professor and long-time friend of Sherry, remembered his colleague as an expert on criminal law and the judicial system.

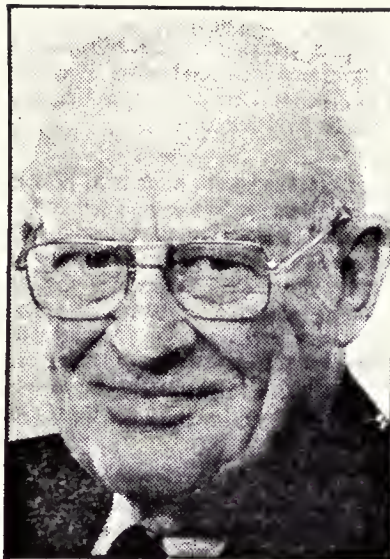
In 1964, Sherry was appointed by a joint legislative committee to draft a new penal code. It was the most comprehensive overhaul of the state's criminal laws since its enactment in 1872.

Sherry, in 1964, foresaw attacks on the modern standards of the insanity defense.

"He was committed to the integrity of the legal system," Kragen said. "He wanted things done the straight way."

After his retirement in 1976, Sherry published memoirs of his work with Warren.

Sherry is survived by his wife Mary Ellen Leary, former political editor of the San Francisco News and the West Coast correspondent for The Economist magazine; daughters Suzanne



Arthur H. Sherry
Distinguished legal career

Sherry of Sacramento, Judith Sherry de Carbonel of Orinda and Virginia Bellitini of San Rafael.

Donations in Sherry's memory may be sent to scholarship funds of St. Mary's College scholarship or Boalt Hall.

The Mass will be said at 10 a.m. at St. Francis De Sales Cathedral in Oakland.

Oakland Tribune
June 30, 1986

San Francisco Chronicle
June 30, 1986

Arthur H. Sherry

Arthur H. Sherry, retired University of California law professor and prominent prosecuting attorney, died yesterday at Merritt Hospital in Oakland from complications after a stroke.

Mr. Sherry, who was 78 and lived in Piedmont, taught for many years at both UC law schools, Boalt Hall in Berkeley and Hastings in San Francisco.

He was married to Mary Ellen Leary Sherry, a prominent San Francisco journalist and political editor of the old San Francisco News.

After graduation from Boalt Hall in 1932, Mr. Sherry joined the Alameda County district attorney's office, then headed by Earl Warren, who would become California governor, then chief justice of the United States.

Mr. Sherry later was an assistant state attorney general and chief criminal deputy under Attorney General Edmund G. (Pat) Brown Sr., who also became governor. In 1953, he was named by the American Bar Association as executive director of a national study on the administration of criminal justice.

In addition to his wife, Mr. Sherry is survived by three daughters, Suzanne Sherry of Sacramento, Judith deCarbonel of Lafayette and Virginia Bellettini of San Rafael, and by six grandchildren.

A rosary will be recited at 4:30 p.m. Wednesday at Bay View Chapel, 2414 Martin Luther King Jr. Way, Berkeley. A Mass of Christian burial will be celebrated Thursday at St. Francis de Sales Cathedral, 635 22nd Street, Oakland.

The family prefers donations to the St. Mary's College Scholarship Fund and Boalt Hall Scholarship Fund.

I PERSONAL BACKGROUND

[Interview I, February 24, 1971. Interviewed by
Miriam Feingold.]

Family

MF: Why don't you begin by telling me a bit about your family and where they came from?

Sherry: Gee, that's a long story. Well, my grandfather, Bernard Sherry, was born in Rochester, New York, and was married there. My oldest uncle, his first child, was born there. Then he came around to San Francisco as a ship's carpenter.

He was a wheelwright in Rochester, which of course is making wooden wheels for wagons and that kind of thing. He worked for a while as a teamster on the waterfront in San Francisco. Then together with some other men, he started the first soda cracker factory that San Francisco ever had.

MF: What years are we talking about?

Sherry: We must be talking, so far as I can tell -- we haven't got any accurate family records -- but this has to be 1868, 1870, somewhere in that neighborhood.

After he had made good, then he sent for my grandmother and their oldest child, John. By that time they had that rather precarious railroad service across the Isthmus of Panama, so she sailed down to Cristobal and then across to Panama by the railroad that existed then and then by vessel up the coast to San Francisco.

After that, my father and a number of other children were born to the family. That's the Sherry family.

Sherry: Now, my grandmother on my mother's side was Irish-born and emigrated to New Zealand. Her name was Honorah Burke. In New Zealand she met William Harnett. We do not know how he got there, but he came from Ireland, and there is some reason to believe in the family that he came across the plains to California and then on to New Zealand. In any event, they met there and had an elopement from Wellington to Benicia, California, on a sailing vessel, and arrived here. My mother thereafter was born in Benicia. The house is still there. I think it's on Third Street, where this all happened.

Then my grandfather expanded his business interests and ultimately became associated with a man named Manuel Freitas in dairy products, butter manufacturing and that sort of thing in San Francisco and my uncles -- my father and his two brothers -- kind of drifted into that business. Ultimately it became Sherry Brothers and continued operation until it was killed off by the depression in 1930 or '31, around in there.

My mother was born in Benicia. She went to what was then called San Francisco -- or State -- Normal School, which has now become San Francisco State University. I think she was one of its earliest graduates. She went into school teaching and taught up on the Mendocino coast and in Sacramento, and met my father on a blind date after a baseball game in Benicia. He was a baseball player for a semi-pro league in those days.

She and my father first settled in San Francisco and then came to Berkeley after the fire and earthquake, where I was born in 1908 on Grove Street. So I'm Berkeley-born, which makes me somewhat unusual as a native Californian.

MF: What kind of education did your father have?

Sherry: My father went through high school and some business college. He was terribly interested in baseball. A number of his chums went on and became major league stars, but my grandfather got hold of him one time and asked him what he was going to do, play baseball or try to make a career in business, so he opted to go into the business and then went to business college. He didn't have any academic college education at all.

After the business closed down, my father went into the real estate business here on the East Bay.

Sherry: Except for the war years, when he wound up as a production supervisor for Bethlehem Steel Company building ships during the war, he was in real estate until his retirement.

MF: Is he still alive?

Sherry: Oh no. No, he died in 1953. My mother is dead too, in '61.

Education

MF: So now we have you born.

Sherry: Yes. The first school I went to was the Emerson School, which is just down south of the campus. Then, after first grade, the John Muir school opened and I started there in the second grade, and went through grammar school, and then high school at St. Mary's College High School it was called in those days. After finishing there I went on and graduated from St. Mary's College with the class of 1929.

MF: Didn't former district attorney J. Frank Coakley go there too?

Sherry: Yes. He went there, but he's been almost everywhere. He went there, he went to Stanford, he went to University of California law school. I knew his brother Tom, who has just retired from the court of appeal. He was just a year ahead of me at St. Mary's College, and then at Boalt Hall later we were contemporaries. He had stayed out a year before he came to study law.

MF: You knew him when he was playing in the band?

Sherry: Oh yes, I should say. He stayed out the year because he got a contract to play in the Roosevelt Hotel in Hollywood.

MF: That's quite an honor!

Sherry: So he took a year out to do that and then decided he better return to law school. But then he played -- had the band going all the time he was going to law school, and then afterwards when he was admitted to the bar he began his practice by representing --

Sherry: doing mainly the legal work as counsel for entertainers of one kind or another. He was very successful, and went into a general law practice thereafter.

MF: Did you have any brothers or sisters?

Sherry: I have one brother. He also graduated from St. Mary's College, but he didn't do any graduate work. He was very interested in travel and that kind of thing. He started to work for a travel bureau here in Berkeley, and then joined the Luce Publications before the war. I guess he was assigned a time in the San Francisco office.

After his wartime service in the Navy he came back again and worked for the Luce Publications again. He recently retired as one of the executive persons of Time Life International.

He spent most of his career overseas, in France, Central Europe, and then his last assignment was in Mexico City for Central and South America operations. He's now retired and in New York, and thinking of moving out to Mexico City again. It's too expensive in New York. [Laughter]

MF: I can think of a few other things it's too much of in New York too!

What did you say his name was?

Sherry: Noel.

MF: Getting back to your own education, what were you primarily interested in in school?

Sherry: You mean in undergraduate work? Well, I guess -- I never liked the idea of a major and at St. Mary's it was a pretty wide open curriculum. We could pick and choose pretty much. So I would say the concentration was largely in philosophy and history. Those were my chief interests and, outside of law, remained so.

MF: Do you remember any of your teachers particularly?

Sherry: Oh, I think I could remember all of them, almost all of them. The names won't mean much because they were Christian Brothers and they used religious names. Brother Leo was a great scholar in literature,

Sherry: particularly English literature, and something of a philosopher in those days.*

He was a very, very distinguished teacher and an inspiring one in English. By God, after about two or three months in his general class as a freshman, I got all inspired and a friend of mine and I went out together and had a competition trying to read all of the Victorian novelists, all Dickens, all Thackeray, all Swift. And we did.

MF: How long did that take you?

Sherry: Oh, it took a year or so I guess. But we kept at it. We didn't read anything else. So he was quite a teacher.

Then I had a lay teacher on the faculty then, James L. Haggerty, who was quite a distinguished man in his day here in the field of philosophy.

The others were "Brother so-and-so" and that sort of thing, but those two, Leo and Haggerty, were the two great stars on the faculty, in those days.

MF: If I remember correctly, Mr. Coakley talked about Brother Leo also.

Sherry: Oh yes. Yes. He was a very, very outstanding guy.

Law School

MF: Then what interested you in law?

Sherry: Well, it's hard to say. I actually didn't have much idea of what to do at all. My class was the class of 1929. The depression broke that year, in October, but my parents, having been overjoyed that I finally made it through college. sent me off to Europe and I had a

*He retired from the Christian Brothers and the chancellorship of St. Mary's in the mid nineteen thirties to a literary career under the family name, Dr. Francis Meethan.

Sherry: three or four month summer tour, third class trip in Europe, the kind of thing that youngsters today do in very large numbers, as you probably know. We were just over there in 1969, and gosh, it was just swarming with college kids. But it wasn't so usual in those days.

MF: Oh yes. Your parents must have had enough money to --

Sherry: Well, you know, it really didn't take very much. I remember that my father gave me a thousand dollars. He said he would invest that much in it, and I came home and gave him two hundred dollars back, and I had a wonderful time. The most expensive thing was the railroad trip from here across to New York to board the vessel.

You could travel -- there was a book, a popular book, like these Fielding's Guides and the Five-Dollars-a-Day in Europe, then called Through Europe on Two Dollars a Day -- two dollars in American currency, because of the unsettled conditions following World War I there, from which Europe didn't recover for a long, long while. Your money would buy an awful lot of foreign money. You could pay your travel expenses and your living expenses inside of two dollars a day with ease. Very simple.

MF: What sort of places would you stay?

Sherry: Oh, we'd stay at pensions, generally that type of place, or small hotels, and travel third class on the railroad, which was very inexpensive. Of course, that's still a bargain to travel.

MF: Yes, that must have been quite an important part of your education.

Sherry: So, when I came -- I had been thinking of what to do. I didn't want to work in the sense of working in business. I'd done a lot of summertime work, everything from lumber camps to service stations and that kind of thing.

We had had a kind of vocational series of lectures in our senior year, in which graduates of the school would come back from the various professions and businesses and that kind of thing, and talk to the class about a career in business, or a profession, or whatever it might be. One of them was a lawyer, and about all he did was to say, "It's a very, very difficult

Sherry: subject. Only a very few people can do it, and it's awfully tough and very demanding, and it takes ten years before you can even earn a living at it when you get out into practice." He made law sound just one of the most rugged, difficult, awful things you could ever think of, and I just didn't believe him. So I thought, "Well, you know that's an idea." I began to think about studying law, and the idea of going to graduate school and law fit together quite well.

I could have gone to Harvard if I'd wanted to. I remember coming back from Europe in the fall, and I went up to Cambridge and got in there. I was traveling then all alone. Before then one of my school chums had been with me most of the time.

I got in there by the side of Langdell Hall there one cool, kind of dark, afternoon in August, and I took one look at the place and walked down to the nearest telegraph office and told my mother to enroll me in Boalt. Cambridge was dark and forbidding, and I didn't know anyone there. I guess I was homesick at that time. So I came back and started here and finished here in '32.

MF: Were you interested then in any particular kind of law?

Sherry: No. I became very interested in it once I got started in it and discovered what it was all about. There isn't much opportunity even now to do any kind of specialization in law, nor is it wise. There is so much that you have to know in law school that it's necessary to cover as wide a spectrum as you can, particularly since you don't know what your opportunities are going to be.

MF: Yes, that's true.

Sherry: There isn't any point really to endeavor to specialize to the extent that you can in law school, let's say in tax law, or family law, or whatever it might be, because when the opportunity turns up, the one that you want to take may be in some other kind of an area, a different kind of practice. You just narrow your opportunities by specializing, I think.

Of course, there are some students who are unusual, who because of prior experience or I don't know what -- inspiration, whatever it may be -- know exactly what they want to do and pursue it with a kind of single-

Sherry: minded purpose, and they get there. But they're unusual, most unusual.

MF: Do you remember any of the professors here?

Sherry: Sure. All of them.

MF: Which ones particularly struck you?

Sherry: Well, Orin Kip McMurray was dean of course at that time, and Max Radin was here, and Ballantine, and Langmaid, and "Captain Kidd" [Alexander Marsden Kidd] of course was teaching the criminal law course.

MF: I didn't realize he taught here.

Sherry: Oh yes, he was one of the oldest men on the faculty. Then when I came back to the school, he was still here but he was retired at that time. He wasn't teaching.

Warren Ferrier, Barbara Armstrong, who was still around taught me what was then called community property law. We didn't use the name "family law" at that point. It was called community property law. It was a kind of community property, family law course. Roger Traynor taught -- I had two courses from him. George Costigan was the teacher in contracts. He was excellent of course.

MF: Who taught criminal law?

Sherry: Kidd. He was the only one. That's about it. It was a twelve-man faculty, something like that, at that time, to a student body of maybe three hundred or so.

It was an entirely different kind of experience than now, because then they followed the Harvard pattern, which was a very rugged kind of a procedure that grew out of the fact that just about anybody who had a degree, a college degree, was eligible for admission, so classes were admitted that were fairly large. They were almost twice as large as the classes that graduated. There would be a tremendous attrition usually at the end of the first year.

My class started I think with about 150 students and we graduated something like sixty-two or sixty-three, about that number. It was simply a "sink or swim"

Sherry: proposition. Nobody took you by the hand or gave you introductory courses to law or anything of that sort, or even showed you how to write a brief. I never talked to a professor after class, except in circumstances where I was in trouble over something, that was the only time you talked to a teacher. There wasn't any of this "one to one" teaching that we have today at all. You just went through this institution and if you passed your examinations, okay, and if you didn't, out you went. That was all.

MF: Did they use the case method?

Sherry: Yes, a very, very rigid, very tough case law method of teaching. Much more emphasis on case method than now. Since those days there has been a good deal of criticism of the case system. At that time it was a fresh new kind of thing. The idea of not reading law out of textbooks, that kind of thing, but dealing actually with the decisions of the courts was considered to be a very innovative kind of thing.

All the teachers, all the faculty had been recruited from the best law schools in the country -- in those days the university could go out and buy who it wanted. There wasn't any problem about money at all. In a very short time they created an extremely strong faculty at Boalt Hall.

By the same token, they were all people of about the same age level, and some years later, why they almost all retired or died, you know, at the same time, which was quite a blow to the school. They were a good strong faculty. They were very, very bright, very strong teachers. But emphasis was on case method, and you briefed your cases and responded in class to them. That's about all you ever talked about.

MF: Was there anything like internship work that you could do in a law office?

Sherry: No. No. Nothing at all. It wasn't even thought about. It wasn't even considered.

By that time of course, depression had hit and times were very tough. The students who were graduating

Sherry: ahead of me were coming back with stories about difficulties in getting jobs in law offices -- big firms were discharging people by the dozens you know. There were lawyers who were practicing out of their homes so they could keep up the payments, or practicing you know in the streets actually, or hanging around courtrooms and looking for court appointments and that kind of thing.

In law school it was harder and harder for students to get work, any kind of work. My father had always insisted that except when I was in school I pay my own way, so, you know, when summer vacation came I was expected to go out and go to work at something, and so I did. I did a lot of things. It was a great experience.

MF: What kind of things did you do?

Sherry: Well, I began working on summer vacations for Standard Oil service stations -- it was called then, back I guess in about 1926 or '27 -- that's a long, long time ago -- in a service station down at Shafter and College as an air and water boy. I was in high school, and you wore a brown overall kind of thing, a jumper business, and all you could do was to inflate tires or put water in radiators, you know, wipe-the-windshield thing. That was your bit. \$75 a month. Good money.

I would work in summers after that; I worked up so that I was senior salesman, all that kind of thing, operating stations, all in this area. In my two law school summer vacations I went to sea. That was just wonderful.

MF: As a seaman?

Sherry: Yes. Ordinary seaman. I sailed here first on the S.S. President Johnson, which went around the world in three months and twenty-one days. Each semester was three months and twenty-one days, and summer session, intersession, was three months and twenty-one days, so if you caught it right you know, you could use every day. That was a lot of fun.

After the first trip, that's one of the reasons I took a course in admiralty, which I liked very much, when I got back. One of my classmates was the great Melvin Belli.

MF: Oh yes!

Sherry: Because he went to sea too.

MF: So you graduated from law school in 1932?

Sherry: The class of 1932. Yes.

Early Legal Experience

MF: After graduating from law school what did you do?

Sherry: Well, I began studying for the bar. That was the big thing that you did in those days. They had only one bar review course and that was Bernard Witkins' course, Witkins' bar review course.

But I, in common with several of us, instead of taking the review course, we bought "Witkins' Summary," as it was called. That was a mimeographed survey or summary of California law, and four or five of us studied that on our own. We'd read it and read all of the cases and talk about the thing. We couldn't afford the bar review course anyway. We didn't think it was necessary. I still don't think it is, as a matter of fact. I think this way is just as good as any other.

But it worked anyway, and then we had a lucky break. The father of one of the young men, one of my classmates who has since died, was doing some political campaigning. How he got into I don't know, but he was involved in the campaign that enacted the Constitutional amendment to permit horseracing in California, and we served in that campaign. I guess I got about a month's work out of that thing, \$5 a day. That was very good indeed.

Then of course the bar examination was in August. I guess we were admitted and got the good news in October sometime. It was while I was campaigning actually that I got the news. The letter was there.

Then, you know, what do you do? My father was acquainted with lots of lawyers. Judge Athearn was a

Sherry: next door neighbor -- of Athearn, Farmer, Chandler and Devlin. Athearn was a former corporation commissioner and actually had been a teacher at San Francisco Normal School when my mother was there. She had known him from that far back, and Mrs. Athearn also had been a teacher, so as neighbors we were fairly close.

But that, or any of my father's golfing companions and the rest of it, didn't do me any good. Times were just tough, and very few people were getting placed. The Law Review fellows for the most part did get jobs but it was a long pull before everybody settled. Ultimately those of us who went through it, most of them got along and have done very, very well indeed in the practice of law.

Folger Emerson, now Judge Emerson, was in the class ahead of mine, and Folger had the same kind of problem. He'd been out a year and had not been able to get anyplace at all. He had latched onto the Legal Aid Society Office, the Alameda County Legal Aid, which was then and for many years under the direction of a lawyer as an adjunct to his private practice. Sam Wagener is still active in Alameda County Law, a very, very distinguished guy. He was president of the State Bar, and has been on the board of directors of the State Bar for a long while.

Folger was there, and I ran into him one day, bumming around looking for something to do. I'd been doing some legal work in connection with the winding up of my father's business in San Francisco, mostly trying to collect bills and that kind of thing. He suggested I go. At least I'd have a place to hang my hat and the use of a telephone, and occasional secretarial assistance, and a magnificent general practice, with no money.

I did that, and if we could pick up any private practice that was fine. The secretary would do whatever typing we needed. We made our own arrangements for paying her extra for that kind of work. It turned out to be a very good opportunity because I joined the local bar, the county bar right away. I believe I've been a member of that bar since 1933 now. That's a long while.

Through that, I got an opportunity, mostly at

Sherry: meetings, of meeting the lawyers. It wasn't a very large bar -- four or five hundred lawyers at that time from all over the county. It was a good way of getting acquainted.

II THE ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

Joining the Office

Sherry: Then quite fortuitously, I guess it must have been in the late fall of '32, or it might have been the early part of 1933, we had some kind of litigation, a case that Folger and I were working on. A lawyer in town named Ralph Coffee, who was a friend of my fathers', was representing one of the parties. I had to serve a notice on him. It was a very nominal kind of thing. I called at his office and gave him this thing. He started chatting, you know, what-am-I doing kind of thing. He said, "Why don't you join the D.A.'s office? Earl Warren's looking for guys out of law school," that sort of thing.

Well, I had been tramping around to law offices in San Francisco and Alameda County, just hours and hours you know, during all of this time. Partners would always be very pleasant. They'd give me time and talk. They'd be as encouraging as they can, show you the library, introduce you to the other partners and say how terrible it was, they wished they could give us a job right now, "Why, if we only had a desk here, you could sit down, but no, no pay" and that kind of thing.

So, there I was, when he said that, "Why don't you go down and see Earl Warren or write him a letter or something like that." I said, "Well, gee, I've been around an awful lot of places. That's a nice idea." I was just kind of noncommittal. He said, "Well, ask him about it."

I don't know, I think he phoned me sometime later and said, "You go ahead and write that letter to Earl

Sherry: Warren about yourself and what you want to do and that sort of thing." I said, "Yes." I was still anticipating that the same kind of thing would happen. So I procrastinated. I didn't. Other things were bothering me.

At one of the bar association meetings Coffee was there. He got up and came across the room and said, "Why the hell haven't you sent that letter in to Earl? He's been asking for it." Well, what that means is he'd been lobbying me down there. So I did write the letter, and of course nothing happened. Until I came back to the office one time and the secretary was there, jumping up and down, and said, "Mrs. Bledsoe, the district attorney's secretary, wants you to call her." So I called, and she said, "Can you come down to the office tomorrow afternoon -- or whatever it was -- at about four or five o'clock?" -- something like that -- I said, "Sure, I'll be there." So, that was it.

I went down and of course -- are there pictures around of the old courthouse at all at Fifth and Broadway? Have you got any of those in the archives?

MF: I haven't seen any, no.

Sherry: Well, that was a remarkable old wooden, typical kind of classic federal public building, architecture style, of that day, down at Fifth and Broadway, which was then a terrible neighborhood, where Jack London square is now. There were these big concrete aggregate places and barges came up the estuary. It was all very heavy industrial, with these two railroad tracks running through. So the town was really right on the edge of this old decayed part of town. It was one of the oldest parts of town.

The courthouse was an old building, and it had ramshackle additions put on to it to accomodate courtrooms. I think originally it might have had four courtrooms, two downstairs and two on the upstairs level. But in any event it was an old wooden building, and you went up a high flight of steps from the sidewalk, way up high. It had a sub-basement, and was about twenty feet high I guess off the ground, and then into this brown linoleum floor hallway and a flight of steps going up to the second floor again. It was an enormous climb to get up to the second floor.

Sherry: The district attorney's office occupied the north side of the building, which had been two courtrooms and had been converted into offices. They were the most shabbily built and contrived places you ever saw in your life. One of them, for example, was built on in addition to Earl Warren's one big office and his secretary's office. We used to have a funny name for it, called the bird's nest or something like that. Between one addition to the building and the old wing of the building next door, was kind of a space about, oh, twenty feet wide, two walls up. What they did was build a platform from one to the other, like a bridge you see, and enclose it, a room, hanging in air like that, you know? It was the craziest thing you ever saw. Well, that was Earl Warren's private retreat when he wanted to get away -- he'd go out in that silly little thing.

If there had been an earthquake you know, those walls would have gone right down. It would have just dropped right to the bottom.

He had what had been a courtroom as his office. Mrs. Bledsoe was in the receptionist's area, which I think had been a jury room at one time. Then you'd walk into the office which was enormous, you know, courtroom size, with a very very high ceiling and a great big open space with nondescript chairs, all around the walls. These I found out later were for the staff meetings which were held there. The man was there seated at a corner at the far end of the room, which reminded me later on of the stories about Mussolini and the similar kind of a set-up -- I suppose for different purposes.

Anyway that was quite a march across the room. He was very friendly, as usual, and exerted his great charm. We had a very pleasant conversation. What he was doing at that time was just sizing me up. I got into the personnel recruitment business for that office thereafter, and I know how it was done. He knew about all he really needed to know about me, except to talk to me. That was what he wanted to do.

He explained what the rigors of the situation were, that he was limited by a salary ordinance which specified each position, you see, and the compensation for it. He could only appoint people to vacancies as they occurred. He says, "Not very many vacancies occur here these days."

Sherry: And they didn't. That was a good place to stay. You could have private practice; there was no restriction against it. But it was very tightly controlled. You could never do any private practice on office time at all. It was all on your own -- on Saturdays or evenings or that kind of thing. Even if it were Saturdays or evenings, if there was something else more important, like a trial you had for the office, you devoted all of your time to the office thing. The income from private practice for most of us there was a very slight amount. It didn't amount to very much.

Well, he explained all that kind of thing, and then told me about his business of appointing deputies to serve at his pleasure without compensation, and indicating that there were a couple of others there in that status at that time. So I might have an opportunity to have one of those appointments. Would I be interested in that? I said I would be, and that was all.

I walked out, and it was quite an experience, but gee whiz, you know, "I'll never hear from him again!" I almost forgot about it completely. It was out of my mind, when once again the telephone rang. Mrs. Bledsoe: "Can you report for an appointment to the office -- for an appointment as deputy district attorney?", I guess on a Monday morning or something. "By gosh! Boy, I am a deputy district attorney!" [Laughter] That was quite a thing. At least, although no money, you know, a title, an officer of the government and all that kind of thing. I was pretty young at this point, twenty-three or twenty-four I guess.

But I went down, and into the office again and he told me, "Congratulations. You're on the thing, and you're going to report to Ralph Hoyt." He was chief assistant -- subsequently judge of the superior court.

Ralph headed up the civil side of the court, performed the functions that the county counsel does. But he also ran the personnel. He was very good at that. Warren didn't bother about that much.

MF: I didn't realize that, that that was Hoyt's responsibility.

Sherry: Yes. He was the one who looked after the hired help,

Sherry: and saw to it that people's promotions were not overlooked and that the pay raises were taken care of, and all of these kinds of things.

MF: He'd break new people in, too?

Sherry: Oh yes. He was in charge of what was a very, very elaborate training program they had at that time.

You know, you talk about all these loyalty oaths and all the forms you sign these days when you take public employment. At that time the district attorney handed me a certificate, a fancily printed thing about a four by six piece of paper, which said, "I have appointed so-and-so deputy district attorney to serve at my pleasure without compensation. Earl Warren, District Attorney." He told me, "You take this and go across the street to the Hall of Records and find the county clerk over there to swear you in."

Well, gosh, I was bewildered. "What does all of this mean?" I'd been in the Hall of Records. That's where the Welfare Building now is. It was an old Victorian brick building, an enormous rabbit warren of a place. The county clerk's office was, as you came in, it was right near a great big U-shaped counter, and you walked into the middle of it. It was always filled with people: lawyers filing papers and people inquiring about marriage certificates, and people registering to vote. A very busy scene.

The county clerk was a man named Wade, a very fine man.

MF: Oh, yes.

Sherry: Chick Wade they called him. I got to know him very, very well. He became a very good friend. He was a big, imposing looking man with much charm and personality.

I came walking in the door with this thing in my hand, and he knew precisely what I was there for. He said, "Stand back, everybody! Stand back! We're going to swear in a public servant for Alameda County!" All these people stand back, you know, and look in awe and wonder. I came up, and he said, "Now, Arthur, hold up your right hand." Not a friend or anything, you know, just people.

Sherry: That was the greatest thrill of my life. "I swear to support and defend the constitution," etc. He shook my hand and said, "Congratulations." Gee, I walked out on ten feet of cloud. [Laughter] I'll never forget it.

MF: Do you still have that certificate?

Sherry: It's on file down there someplace.

MF: I see. You handed it in.

Sherry: Yes. He kept it. He puts it in the file. So that was that, and right away I was to report to Mr. Hoyt. Do you want me to go on, on that training program?

MF: Yes I do. In fact, I was just going to ask you about that. I'm very interested in that.

Learning the Ropes

Sherry: Well, that's the next thing that you got. You reported to Ralph and Ralph outlined what was going to happen.

He said I was going to have a reading program, and at the end of the reading program I would get a research problem to see if I could solve it, if I had really learned at Boalt Hall how to do this legal research stuff and that kind of thing. Then he said, "Thereafter if everything is going along all right, you'll be appointed as a junior to go with one of the regular trial staff people for a while. You'll begin to see what the trial work is all about."

There were about three or four mimeographed pages. Let me see what it required you to read. First of all you were required to read the code, the annotated code. Kerr's Cyclopedic Code, that's what it was called. This was a very, very good code, a penal code. It was very good. It's still today the best code I know of to go back if you want to find historical -- history of code sections. It was very good on that. As a matter of fact, that's the best history there is if you want to find out anything, say, prior to 1880 or something like that. Oh, prior to 1900, or 1906. That's the best source of materials. Well, in any

Sherry: event reading a penal code -- that's quite a job. Not the most exciting thing in the world.

MF: [Laughter] I can imagine.

Sherry: So I manfully went all the way through that, and then there were other things to read. Wellman's Art of Cross-Examination, and you know some of these more or less standard "how to do it" books and that kind of thing.

MF: Did you have to read any books on evidence?

Sherry: No. Presumably I was acquainted in the law of evidence. You never learn anything by reading about it. You have to -- evidence is something you can learn the theory of in law school, but its utility, its use, you learn by doing. It's like studying to be a cook by reading a cookbook. You can read it and get all the theory in your head, but you've got to light the fire sometime. You're not going to learn until you do.

I think that reading assignment took about a month. It seemed to me interminable. I think I kind of rebelled and finally went in and saw him and said, "I've gone as far as I can go on that reading; I've been through the code and I've read all of the other things, and re-read them. I read most of them already before I came here." He thought I was a little bit rash, and said, "Oh, you're ready for your problem then I guess." I said, "I guess."

So he handed me a legal problem having to do with a very obscure thing involving a tax and bond issue problem in relation to a school district and the legality of the situation and everything. A very, very obscure narrow kind of a question. Well, I didn't know anything about school districts or bond issues or anything else. None of that was taught in law school. We didn't have any state and local government law courses as we do now.

I just went to work on the darn thing and within a fairly short time I had found the case on which the problem was based, and discovered by reading the case that there wasn't any real solution to this. There wasn't any precedent there, you know, all that kind of thing. So I wrote a memorandum on the thing: "It's absolutely unique. None of the authorities indicate

Sherry: that this problem has arisen in any other jurisdiction," and I was able to do all, you know, the whole thing, and say, "it's got to be resolved ab initio, right from the start." I gave a suggestion and I said, "I think maybe this is the way you solve it in relation to -- if this problem now recurs."

Well apparently this was kind of a masterpiece, because it was an actual problem in the office, and it just baffled everybody. You know, it was one there was just no answer to. But at least my suggestions were no worse than the suggestions of the rest of the staff, so Ralph laughed and said, "Well that's pretty good. Now let's go down and see Bob Hunter and get latched on to one of the fellows and start going to work."

MF: What was Bob Hunter's --

Sherry: Bob Hunter was the deputy district attorney. He was chief assistant in the Coakley administration but he was on the civil side. He had been doing the criminal, but he was doing mostly civil work at that time, and working with Hoyt on civil stuff. He did most of the work for the sheriff's office, representing the sheriff on all of the creditors remedy situations and attachments, and all that kind of business, advising as to the legality of the work that the sheriff's civil department was doing.

I started in and began going down in the Superior Court there in trials -- all kinds of trials --

MF: Both civil and criminal?

Sherry: No. It was all criminal. Leonard Meltzer, who is since deceased, was in charge -- what they then called a calendar man. He was a kind of director of criminal work in the office. Charles Wehr and Warren Olney were doing almost all the homicide stuff. George Perkins -- his speciality was in frauds, corporate securities particularly, which were very, very prevalent in California in those days, because the law was most inadequate in controlling in those depression days when "get rich quick" schemes were springing up on every corner.

Sherry: There were some magnificent frauds and scandals. It was a very, very active field all through the 1930's until shortly before the outbreak of World War II. At that time legislation had caught up with the situation and brought it pretty much to a halt.

I tried cases with Frank Coakley and Leonard Meltzer. These were the trial guys at that time. It was a lot of fun.

Office routine, as it then existed, was to have a meeting of the so-called "outside" deputies, that is to say the deputies who were working in Oakland in the prosecuting attorney's office there, and the Berkeley office and the Hayward office. That's all there were. There were just the three.

There was an office in Alameda, but that was covered either from the courthouse or -- no, that was covered by the man who had the county run, Stanley Smallwood. He would start out every day -- he lived in the lower end of the county, but he had a county car, and he would bat around that lovely country down there from Livermore to Pleasanton, to Hayward, San Leandro -- you know, kind of a traveling guy meeting the people at these old justice's courts. It was just country down there in those days. He covered Alameda too. He would hit Alameda on Thursday before he came into the meeting, you see, on Thursday afternoon.

So we would meet then in the Chief's office -- this great big office with chairs all around, you see, to accomodate us fine. He would call for reports -- what's going on here, what's going on there, how's Judge So-and-So, and that kind of thing.

The result of this was that we got to know exactly what he was thinking about things, and we got to know what each other was thinking, and we got to know what was going on at this level around the county. This is where things are going on, where people are getting gypped or where robberies are happening or where somebody is starting a gambling racket or whatever, and it was a good exchange of intelligence.

But also, it was a critique of what we were doing, and if a complaint had been lodged with the Chief about something, why we would explore that right there. Boy,

Sherry: if you hadn't handled that problem right, he'd just get so mad -- he'd pound the desk you know: "Harry, you should know better than to do that!!!" [Laughter] He'd just let himself go with his own people there completely. Those meetings would go on -- they were scheduled for 4:00. They would usually begin about 4:30 or so, and they'd run sometimes to 7:00 or 7:30 at night before we were through with them.

Then on Saturday morning there was a meeting of the entire office, at 8:00. This was held in what passed for a library in the old office there. It was rather small, but everybody could get into it. All of this is all civil and criminal -- the whole shooting match. One of the deputies would be assigned in rotation to have read the advance sheets, the advance reports of court decisions in California courts and then to recite what the case was and what the opinion was, and that sort of thing. They didn't have time to read them themselves. Then we would talk about the cases and the decisions and how they would affect us.

MF: Did you find that valuable?

Sherry: Oh yes! That was tremendous -- well, that wasn't so valuable as the reactions of Earl Warren and my colleagues. I always read them myself anyway. I didn't like getting it secondhand from somebody. I didn't care much about that, but then the discussions that came -- the formulation of policy.

He would tell us what he was doing, and the problems that he saw, governmental problems, state and local, as well as the operations in the office. Those meetings generally would drag on until about 10:00, about two hours, sometimes a little longer. Then, if that was a Saturday when there was a football game in Berkeley, why people would begin leaking out of the place. They could figure out pretty well when the Chief would leave too because he'd be going to the same place. So a few would stay to keep the office open until 12:00. But the big thing was the office meeting.

MF: How were cases assigned?

Sherry: Well, that -- I think I can attack that, or reach that better by telling you about personnel assignment at

Sherry: that time, and what happened to me in that respect.

The practice was to go through the training period, the reading and the working of the research problem period, and then to go to court with the other lawyers. You would be with them when they were preparing their cases, so you'd know how to prepare a case for trial and the techniques, how to conduct witness interviews and draft a trial brief. You'd just learn that by doing, by watching and by observing, and then one day you would be -- "Well, go ahead and examine the witness. You've talked to him before, you know."

So then you'd begin to learn how to examine a witness in court and then the day comes for trial and you are asked to make the opening statement. You know. That kind of thing. Ultimately you're really on the rails as a junior when you have the privilege of making the opening argument at the beginning of a case, with the senior guy making the closing argument.

When you've gone through that process, you would get to the point where you would do all the direct examination of the witnesses, and the senior guy would take care of the cross-examination. Then you'd finally get to the point where you would do the whole blooming thing, except making the final argument, depending on how well you were getting along with it. But during that stage, all of that stage, you're in a subordinate -- learning in an apprentice sort of capacity.

Work in the Oakland Office

Sherry: Well, this lasted -- let's see, until about 1933 -- I guess about, oh, in the late fall of 1933, or sometime or another. The next step was assignment out to one of the prosecuting attorney's offices where you'd go to work at the misdemeanor level and learn how to conduct preliminary hearings on everything from failure to provide to truancy to shoplifting -- the whole mess.

I was sent up to the Oakland prosecuting attorneys' office. I was told I was being changed now, I was

Sherry: going to go up to the Oakland office, which was like being pushed out of home by your parents when you've grown up. At that time the Oakland office was in the City Hall, where it remained until quite recently when they built the new building down there.

The man in charge was Joe Murphy, Joseph Murphy, who was quite a guy. Joe had been a newspaperman. During the war he was in the U.S. Air Corps. In my younger days I regarded anybody who could fly an airplane with awe and wonder. They were really something. Joe had been a flyer in World War I, although he had never gotten overseas, but he'd done a lot of flying. Then after the war was over he didn't fly thereafter. He went to work for AP, Associated Press. I think at one time he had the night desk in Oakland. He was going to law school, at night. No, he had the daytime desk; he went to law school at night. In any event he got acquainted with Warren as a result of this newspaper work, and Warren said, "Well, if you ever pass the bar, you can have a job in the office."

He did that not only with Joe, but that happened to two or three others in the office. In any event Joe got the job. He was very briefly in the main office on the trial staff, but he was in charge of the prosecuting attorney's office there in Oakland, which consisted, I think, of five of us. There was Joe, and Lawrence Fletcher, who was also on the without-compensation list at that time; Harry Stiles, an older man who had come into the office I think somewhat late in life, and went off back to somewhere -- I don't know. And Owen Hotle, "Oxie," who went up to private practice in Santa Rosa. I understand he's retired now. And I. We were the whole shooting match.

There under Murphy's tutelage I learned how to put on preliminary hearings. It's not a very difficult thing to learn. I learned all the business of relationships with the police department and, you know you get so you're part of them -- city government, all the rest of the things, city attorney's office. We had relations with and worked together with in some aspects.

Then the constant push, push, push. That was a very busy kind of job. We would have thousands of people a month you know coming in and out of the office with all kinds of petty complaints, and here

Sherry: would be four or five of us to handle the whole thing. That was a terrific experience. Then I began trying jury trials. My first jury trial work was done there. This was a very very active, very demanding part of the time. I never paid much attention to the fact that my father was giving me five dollars a week so I could keep going -- buy my streetcar fare and lunches. [Laughter] Such little private practice as I could pick up didn't amount to much.

Then, one day -- let's see, this has to be in 1934 -- Olive Bledsoe again telephoned and said, "The Chief wants to see you. There's something he wants to talk to you about." That's all. A summons of that kind was not something that you'd take very lightly. So I went down wondering what's wrong now.

MF: [Laughter] What terrible things have you done?

Sherry: I was ushered into the office, and he says, "I think you've been working for nothing long enough. Here's your new commission." Gosh, I looked at it: "Deputy District Attorney. \$200 a month." Well this happened because we had lost a couple of deputies. Paul St. Sure had left the office. He had been in the office up to that time. After Paul St. Sure, Adrien Hynes was the next man to go. When Adrien Hynes left, that opened up the bottom slot. I think Paul St. Sure's removal put Larry Fletcher in, because he was ahead of me, and then Adrien Hynes -- and I was in the slot at that time. Gee, \$200 a month. By gosh. In two months time, I bought myself a car and got married, all at once. That \$2400 a year, by gosh, I had more fun on it. I think I saved more of it than I have ever since.

Then in 19 -- I guess this was in 1933, still in the Oakland office, I stumbled into an insurance fraud case. An elderly man came in with this very gaudy insurance policy that said, "Western Pacific Life" or some such ambiguous kind of a name, and he said, "You know, I paid that fellow \$60 for this policy" -- it was purported to be a health and accident insurance kind of a policy with a beautiful-looking certificate and all that -- but he said, "but you know, I just can't believe it. I've been turned down by insurance people all over the place, and this guy came and he gave me this big pitch, no examination, no nothing,

Sherry: \$60 down and you pay about \$5 or \$10 a month," something like that. It was all there, what you paid, mailed to an office in Los Angeles. He said, "I'd just like to know if I got my money's worth."

I didn't know, so I just phoned the insurance commissioner's office, and got hold of somebody. I don't know whether I knew someone -- I must have known one of the fellows over there -- and he says, "Heck no, that's an unlicensed outfit. They haven't got any insurance company. They're just selling people pieces of paper." He said, "That's just one of about six titles that they're peddling these days," and there was no direct regulation of this thing at that time.

You didn't have to register for the kind of insurance company it purported to be -- I think it purported to be a mutual company. Only stock companies were regulated, and so there was no law preventing a person from organizing one of these "mutual" things and going into business. But these people hadn't organized it. They just pretended they had something. The cash input here was all theirs. There just was no insurance company at all.

So when I found that out I got somewhat concerned about it, and I thought, "This is an awful gyp." But he didn't know who had sold the paper to him. He didn't know where he was. He had the name, but the name meant nothing. There was no address. There was a Los Angeles address I think on this piece of paper and \$60 petty theft. What do you do in that kind of a situation?

At one of the Thursday meetings of the justice court prosecutors I talked about this thing. I thought we ought to follow up, and all of a sudden, around the room other deputies spoke up, "Oh, we've got one of those." The Chief said, "Gee you'd better turn in all your stuff to Arthur here, and let's see if maybe we can make something out of it."

So I got all the files, and you could see a pattern by dates as the sellers moved through Alameda County selling this phony paper as they went. I went over to the insurance commissioner, and they had a much larger picture. They had them coming up the Valley from Los Angeles to the north, and then coming

Sherry: down the coast selling these things as they went along. They had a lot of information. We began identifying the guys who were selling and then we began soliciting -- asking the police and everybody else and telling people, "If you hear of anyone else who has done this, let us know."

We picked up a large number of complainants in this area. The money involved in Alameda County was \$150,000 or \$200,000, which for those days was a considerable large amount of money. I finally got all of this put together and came down, and told everybody, I said, "By gosh, we can go after this as conspiracy or something, because then we can get all this -- "

"Conspiracy to do what?" was the answer, and I said, "Well, conspiracy to obtain property by false pretences, and conspiracy to operate -- conspiracy to act as insurance agents without licenses." Now, these are misdemeanors. There are big arguments all the time about whether conspiracy to commit a misdemeanor ought to be a felony or just a misdemeanor. Well, we thought the law was useful. We could handle the cases as a felony and thus we could take it to the grand jury.

Well, in any event we got grand jury indictments, made a raid on the office in San Francisco and for the first time in my life Deputy District Attorney Sherry is all over the front pages. This is my case, you know. And it was just absolutely great. This was the first time I put the case on before the grand jury. It was my first grand jury experience. Warren himself was there. This was a big enough thing. It was quite a show. We finally rounded up everybody and they all wound up by pleading guilty so there wasn't any trial involved in the thing.

In Charge of the Berkeley Office

Sherry: About that time Marcus Hardin, who is now senior partner in a big law office in Oakland, was then in Berkeley as prosecuting attorney of Berkeley. Warren began a personnel shuffle. Mark was recalled to the main office to get on the senior trial staff to try cases there, and apparently because of my success with

Sherry: the insurance fraud case I was told that I would take over the Berkeley prosecuting attorney's office.

MF: What year was this?

Sherry: 1934. I came out here and started in January, 1935. I remained in Berkeley, I guess, until about '38. About three years I had out here. That was a most unusual job in those days, because I was deputy district attorney, but I was the prosecuting attorney in Berkeley, the name on the door in letters of gold said so, and I had a secretary all my own. We had what they called a Justice's Court in the city of Berkeley. That was the name of the court. Oliver Youngs was the judge of the court.

Here I was then responsible for the prosecution of crime in Berkeley. The Berkeley police department was the outfit I was working with, and I was the one who determined whether cases would be charged and what the charge would be and all that kind of thing, which was the first really big ongoing responsible job I held in the office.

MF: Yes. I want to ask you a question about that. I think that in 1934 there was a constitutional amendment passed that allowed the defendant to plead guilty to a felony in an inferior court.*

Sherry: I don't know whether it was then or not. '34 was the time when they passed the thing allowing comment on the defendant's refusal to testify, which has since been declared unconstitutional, but which most important of those changes was making the attorney general chief law officer of the state of California --

MF: Yes. I think that this pleading of guilty to a felony in police court was passed in '34.

Sherry: It could have happened at that time.

MF: I wondered if that had any effect on your work?

*Penal Code Sec. 835a, 1935. A legislative enactment. [note added by Professor Sherry during his editing of the transcript.]

Sherry: No. It just meant that instead of waiving preliminaries, a man could plead guilty right there. It just expedited things. Just had a certificate clamped to the complaint to the effect that he had pleaded guilty to the charge, and the complaint was certified in the superior court for sentence. We used the procedure right away. A lot of other counties didn't wake up to it for two or three or four years after.

But there are many cases in which the defendant -- there was no point in standing around and waiting for a preliminary hearing and waiting, you know, for a transcript to be prepared in cases involving, let's say, a parole violator who has been arrested on another charge and charged with it. He's going back to prison in any event, and he didn't like the dead time waiting for this procedure. So if he could plead guilty and get the thing over with right away, it was all to the good. That was its chief utility. Or in cases in which it was obvious there was no defense. But that dealt with a relatively small matter of procedure. It was just a convenience.

MF: Oh it was? I didn't know about that. In some of the research I had done, I'd come across quite a debate in the Commonwealth Club about that amendment.

Sherry: Well, it has continued and experience has been very good with it. But it's not a procedure that is very often invoked. Just in special kinds of cases.

So far as Berkeley was concerned, I was the district attorney. I was the person that people saw every day. Whenever there was any kind of a civic bash, no matter what it was, why I was invited. The prosecuting attorney was on all the programs and all that kind of thing. I joined the Lion's Club; I joined all the other -- I think seven different clubs, stupidly not realizing that my friends in private practice or working for other people were having their dues paid while I was paying all my own. The county didn't take care of that. So I had to cut that down after a while. But I made lots of friends and got longlasting friends. It was home town, of course.

There were some very interesting experiences. We had the first of riots and mass trials and all of that kind of thing, antedating the Free Speech Movement by

Sherry: a good many years in those days.

MF: When was this?

Sherry: Oh, 1935 or '36, when Barbara Hutton, the Woolworth Five-and-Dime store heiress, made her first marriage, which was reported in the newspapers, with people starving to death, as costing a million and a half dollars for this great big thing. The girls in the five and dime store were just getting practically peanuts wages and that sort of thing. There was a lot of labor unrest in those days, efforts particularly to get union labor organized.

There was a five and dime store down at Shattuck and Center, or something like that, on the west side of the street, and there was some talk about strike, but I don't think anybody was actually striking. However, a number of students went down there, carrying picket signs you know: "Unfair," and with references to Barbara Hutton and a million dollars for a wedding, you know, and people were entitled to -- you know, whatever it is.

In those days, picketing was illegal. It was a crime.

MF: That's right. There had been an anti-picketing --

Sherry: It was a crime. People began complaining that the students weren't just standing like these professional labor pickets you see now, they were walking around and raising Cain, as they do now. There is no difference in the technique at all. People didn't like it. They were not used to it. This was a new kind of a thing.

One day, I got a call from the chief of police, whose name was Jack Greening at that time. He said, "I have fifteen people under arrest down here for picketing." No prior information to me as to what he was doing or was going to do at all.

Well, the office was very sensitive to labor problems, because we'd had a lot of trouble in Oakland with a taxi cab drivers' strike involving a couple of murders with drivers driven into Lake Merritt, you know. Oh gosh, it was just awful. And the pea-picker strike thing and other disturbances in the days when labor was trying to organize. This was

Sherry: pre-New Deal of course. Now let's see, wait a minute. It's about the time of the New Deal, '34 I think was the election year, 1935.

This was the time when labor was regarded as being a very radical sort of thing. Organizing efforts were marked by an enormous amount of violence. This was the work of so-called "goon squads." Of course historically, if you read Jack London stories of the old teamsters' strike in San Francisco, back in the years, before that time, where scab drivers would be pulled off their wagons, taken up an alleyway and had their arms broken, so they couldn't drive the teams anymore. These people would hit people with baseball bats and tar and feather them and wrap them in baling wire. Oh, they were real rough.

It was after the general strike in 1934, so Bridges was in the ascendancy and he was trying to extend his power by getting the ILWU people into any kind of a labor situation there was. They read about this little incident in Berkeley, and Bridges told the newspapers in San Francisco, "They can lock up those kids, but by gosh our guys are going to be over there tomorrow and we'll show them what picketing is like." Well, that set off some alarms down in the main office, and Warren began to give it his attention. He was steamed about the fact that the chief of police hadn't said anything to me, you know, before he went out and made the arrests.

Warren was saying, "You don't do things -- you don't react that kind of a way! You work out your problem and see what's going to happen when you do it." Because of course the pickets marched into the court and we had firteen jury trials right away. Why normally, we had a jury trial maybe once every two years. You know, I missed Oakland, where I could pick up a few more.

Well in any event, next day, sure enough, the Teamster guys were out there, and then a bunch of them were arrested, and so here's another big group of people, and these are pros. They got bailed out right away. They knew how to handle themselves.

Then we had in Berkeley on the campus here, what was called a Social Problems Club. That was a

Sherry: communist outfit. They made no bones about it, they were. Aubrey Grossman was one of the leaders of that thing. They used to sit outside the Sather Gate every day and have speakers, very radical, fiery talks, without benefit of sound amplification. People didn't have it in those days. Well they got a lot of sympathizers round about. The same kind of thing that happens around here now, you see. Every day that picket line got bigger, and there were more people, and finally one day the police came back and there were 110 people being processed through the department.

Warren called up and he was livid. "This is no way of doing this kind of thing! You tell the chief of police we issue no more complaints on any of these things until further notice!"

So I told the chief. He was a very, very narrow and unimaginative guy without much flexibility. It just made him mad, but he did it. He took orders.

Then we started setting these cases for trial. We wound up with oh gee, I guess a hundred trials. We ended up trying two jury trials a week scheduled for four months in advance. I was there every day, and I was, oh I was, you know, free to keep trying and trying and trying cases, but this was too much for the defense lawyers. They couldn't be away from their offices for so long. They finally became reasonable, and we agreed on one case in which they would appeal the conviction. Then we would settle all the rest of the cases on the basis of the appeal. If the conviction was affirmed, they'd plead guilty on all the rest of them. If it was reversed we would dismiss all that were left.

MF: Now were these just local defense attorneys or were they --

Sherry: No, this was Grossman and Richard Gladstein. They're still in practice in San Francisco. Gladstein was the attorney then for the ILWU. He'd been at Boalt Hall ahead of me, and Grossman just behind me.

Grossman was a real dedicated communist. He became Secretary of the Communist Party of Northern California later on. These were the years before the invasion of Poland. Actually he was such a

Sherry: dedicated type that he went underground, just disappeared -- you know, did that business. He reappeared after the war, and how he shed that background and got back into practice without a ripple so far as I know, I never was able to understand, but he did. Very, very talented lawyer, and he was on the Law Review here. A very able guy. Boy, he was sure dedicated.

Well, the case was affirmed, and we began looking around for our defendants. Well, we couldn't find any. Half of them were off in the Lincoln Brigade in Spain you know, fighting, the ones that could get over, the real sincere ones. The rest of them finished school and trickled off and were gone. We just couldn't find any of them so we just quietly dismissed everything and forgot about the whole business.

A little after that I went down to the main office and began trying cases. I was a member of the senior trial staff, and did that up until the war took me away, in 1942.

MF: Your mention of those Berkeley cases reminded me that one of the things that we've heard over and over again about Warren's office was that he really expedited cases going through the courts, that he felt that was very important.

Sherry: Oh yes. He insisted on a very, very efficient operation. We used to have great complaints about Frank Coakley because Frank Coakley took too long to try a case. Leonard Meltzer was the calendar man you know. Frank of course would try many of these very, very long, complicated fraud cases, just as George Perkins would, and Frank is slow and deliberate in his trial methods, but my gosh, he had his cases prepared -- I never saw cases prepared more beautifully and more thoroughly.

Meltzer's technique was largely -- a great emphasis on cross-examination, and complete economy of movement: get the case tried and get it done, move it along, don't drag it out and try to prove a lot of facts you don't have to prove, and that kind of thing. Just two different kinds of trial lawyers.

Sherry: But we for example, one of the rules was we must never ask for a continuance. The prosecution is always ready to try a case. That was one of the rules. That was Warren's rule. "Do not ask for a continuance." He said, "There's no excuse for it. If we've got more cases than we can handle we'll tell the board of supervisors we need more manpower."

The operation was very efficient, but you must remember that the -- right across the office, the mean level of professional experience was about fifteen or sixteen years. You see, the office staff had low turnover. They didn't move as they do now, and some of the best trial lawyers in the business were in that office. They'd know it was a reasonably permanent job and they were working at it and developed very, very high skills, so things could move much better than they do now, when you have an every-changing law and an enormous volume that you can't cope with, and young people who come in and go out inside of two years. It's much, much different.

When I returned from military service, Warren had been elected attorney general, and had gone off to San Francisco with Warren Olney and Charles Wehr and Ted Westphal, and one or two others; and Ralph Hoyt was district attorney.

MF: Before we get on to those years, I wanted to ask you also about the Berkeley chief of police. How were your relations with him generally?

Sherry: Well, Jack Greening was one of my first personnel problems in the operation. I normally had little trouble getting along with people, but Greening viewed anybody who came out there new, that he didn't know, he tended to regard them with great suspicion. He was a very cagey, very cautious man, very very fearful about things. He tended to be rather uncompromising and terribly strict, an awful disciplinarian in his police department. But ultimately when you got to know him, when, you know, he finally got your measure and understood where you were, then he was easy to get along with, so far as I was concerned, but there was always -- always a tension between him and his people in the department.

Sherry: I remember one of the things that always happens to you when you are working at the police court level; that people are around asking you to fix traffic tickets, or kill them, or that kind of thing. We had all kinds of rules and regulations about that.

On traffic tickets our answer was, "Yes, this will cost you \$5 bail to be forfeited, or \$10 or whatever it is, and you give me the money and we'll pay it off." The Chief (Warren) said, "There's only one way you can fix those and that's by paying the fine. If your friend isn't willing to, well maybe you're going to have to pay it." Everybody understood that and it worked quite well. A lot of people considered it to be quite a convenience to be able to call up somebody at the district attorney's office and have the deputy d.a. say, "Send me the \$5 and I'll take care of it for you." That was a great convenience.

Anyway when I came to Berkeley, I don't think Greening and I had even met before that time. One of my very good friends, the closest friend of my father's, was in the printing business, Freitas Press in Berkeley, whom I had known for many, many years. His delivery truck man had gotten a parking ticket, and I think Jim gave it to me at one of those Lions' Club affairs. "Some time," he said, "can you do anything about this?" I said, "Well, I don't know. I suppose you'll have to pay a slight amount or post some bail and that sort of thing." He said, "Well, see what you can do."

My contact with the police department was the bailiff, a man named Wise. Wise was a very, very nice guy. He was the guy who would brief me, tell me where the skeletons were hanging and where the booby traps were. I said, "How do you handle these matters out here? How do you take care of these?" "That's all right, let me take care of it." He took it and went away.

I didn't hear anything about it at all until one day I got a telephone call from Warren, the Chief, and he was wild. He said, "I had a complaint here about you from Jack Greening." I said, "What do you mean?" He said, "You've been fixing tags out there."

Sherry: And boy, was I sore! Because Greening hadn't said a doggone word to me at all. I said, "That's wrong. That's all wrong. 'taint right!" He said, "Well, what happened?"

I told him exactly what happened. He knew Greening very well. Greening was always acting like that. He'd never come to the guy concerned. He made the arrests in the picketing cases and didn't tell anybody. Earl says, "well, if that isn't like that blankety-blank. Forget it!" he says, "Forget it!" So I forgot it. That was the end of that. But poor old Wise got pretty badly disciplined for that by Greening.

But insofar as professional relationships were concerned, that police department was great. There were no problems about cooperation or anything else.

Warren Olney and Charlie Wehr handled all homicide cases. They ran that as their own private domain, so whenever there was a homicide, no matter where it was in the county, they'd go tearing off. If there was a homicide in Berkeley, for example, that wasn't my business. They would take care of interviewing witnesses, taking statements, working with the police and all that kind of thing themselves. They were on constant call for that.

One day the inspector in charge of homicide, old Jim Wilson, came in and he wanted me to issue a complaint for a murder, in a homicide case out here. I said, "Well, where's the report?" "Oh," he said, "Wehr and Olney have taken care of that, you know. All you have to do is take my oath on the thing." So I did, and then I went down and got hold of Wehr, and said, "Look, let me take care of Berkeley. You don't have to do that. I can do it." He said, "Do you really want to?" I said, "Yes." He said, "Okay."

Then I went to Wilson, old Jim Wilson. I said, "I'm going to take care of all the homicide stuff." He had me spotted for the tenderfoot. He said, "You really want to get called out on all homicides?" I said, "Sure do. I'll be there. Where you go, I go." -- Full of the old Wehr spirit. --

well, that included automobile fatalities as well as other things. San Pablo Avenue was the place. The

Sherry: death rate down there was terrible. It was a badly lighted street, and that had all the traffic. There was no freeway at that time. All of the north-south traffic, Sacramento traffic, the rest of it, went up San Pablo Avenue. Big wide street, you know. People would get lost in the middle of the street, couldn't be seen, headlights in every direction. Oh, it was carnage. Anyhow, I'm happily asleep at 11:00 one night at home and there's the doorbell, and pounding on the door, and Wilson said, "Well, we got one. Are you coming?" I said, "Sure."

I got dressed and went out, and we had a bad one. I sat around in the hospital all night, talking to the people and taking statements, and that sort of thing. Then I just took over and handled that whole business. But Wilson, after we'd been doing this together for about a month, phoned again one night and said, "We got one." I said, "Okay, when are you coming over?" He said, "Oh, you really don't have to go out on this one. [Laughter] A very normal kind of a thing." He didn't need any help, nothing that they would use -- accidental something or other. So I'd finished my hazing by him. We had a fine relationship thereafterwards.

So that was, all in all, that was good trial experience, darn good investigator experience.

The Role of the Inspectors

MF: Did you have to do most of the investigative work yourself, or did you have inspectors?

Sherry: The police do the investigating at the first stage of the case, but the prosecutor who authorizes the filing of the complaint has to review all the police work, so all of their reports, all of their work has to be put down in writing, and you review it. You are required in most cases you talk to the prosecuting, complaining witness -- you know, the victim of the thing, just to get the feel of the case and decide at what level to charge it, what the traffic will bear in that kind of case.

Now, the inspectors were assigned to the main

Sherry: office, down at the courthouse. They were down there -- Captain George Helms, a wonderful man was in charge. He looked exactly like everything you imagine a wild west sheriff should look like. Just a wonderful and a very handsome guy.

He had six or seven inspectors there whose job it was to do investigative work on the high level stuff that came into the district attorney's office about graft, corruption, and that kind of business, where they did most of their work, most of their important stuff.

They were also assigned to the lawyer on the trial staff who was going to try the case, so that when you received a case down there, and the trial staff gave out a case assignment, at the same time an inspector would be assigned to the case. The first thing he would do would be to read the file, note down the names of all the witnesses that appeared in the file and place them under subpoena right away. Even if you knew you didn't have a fixed trial, they would at least get the people buttoned down there.

Then the trial deputy would go to work and read the preliminary transcript, read all the documents in the file, keeping a record of weak spots in the case, was there evidence of this, and did somebody talk to so-and-so, and that kind of business. Then you'd get the inspector in and tell him if evidence needs to be got, if further information is required. He'd go out and get it, and then usually, most of these things could be corrected by further police work, weak spots and things. We'd ask the officer who had originally investigated the case. It was his responsibility. We'd just talk directly to him. "You know, you've got to get this other stuff for us. We haven't got it."

If he couldn't do it, if it were out of the county or something like that, then the inspector would go ahead and do it. Usually anything out of the city, a ramification in the case of this kind, the inspector would have to do it. Local police couldn't leave their jobs and do that kind of thing. So they did an awful lot of police work, investigative work, in that connection. You'd usually work -- go with him, you know. Both of you would go together on that kind of business. That's basically what they did.

- Sherry: When the case was on trial, they'd be shepherding the witnesses around, and if something would develop during the trial and you needed some information right away that wasn't available, the inspector would get it for you. It made a very effective team. That was the principle function.
- MF: Yes. We interviewed several of the inspectors. I hadn't known that they all worked out of the central office.
- Sherry: Yes. All of them.
- MF: As a matter of fact, I interviewed Lloyd Jester several months ago.
- Sherry: I encountered Lloyd Jester the first time when he was chief of police of Albany, which was an elective job, if you can tie that. Well, not: he was first a policeman in the department -- old John Glavinovich was the chief of police, and when he retired Jester ran and won the election. After two or three terms he came down with us as an inspector. Then he was away during the war, and then he came back briefly after the war and then went off someplace else. That's when I lost track of him.
- MF: Yes, that's right. He was in the district attorney's office before he went to Albany and then about the time when Warren decided to run for attorney general he was asked if he wanted to run for police chief in Albany. After the war, he ended up as police chief in Fargo, North Dakota, and was there for about five years, and then got called back into the service again. When he got back out of the service, I think that he'd written J. Frank Coakley and asked if there was any work here, and Coakley said, "Certainly. Come on back."

Administration of the Office

- MF: Could you tell me something about how deputies were recruited?
- Sherry: The deputies are all recruited the same way I was

Sherry: recruited. There was a reason of course for it. One of the things that Earl Warren was very, very committed to was complete independence of action. As much independence as possible. He didn't want to be subservient to anyone or owe anybody anything. And he didn't -- he was always pressed by friends of his to appoint their sons or relatives to the office for appointive positions. He liked to make his own selection. If a classmate or friend had some young lawyer that he was recommending, Earl would consider the guy.

By having two or three "bottom deputies," as we called them, on the staff without pay, Warren could always respond to one of these requests to appoint some friend or relative by saying, "Well, gee, I'd like to, you know, but things are pretty tight. I've got Senator Fletcher's son down there, and I've got Oxie Hotie, and you know, they're serving without compensation in some cases for a year or two. You wouldn't want me to put your boy in ahead of those guys, would you?" And of course you couldn't say -- [laughter]

MF: Very clever.

Sherry: So that insulated him from people who were -- and gave him an opportunity to be doggone sure who he was appointing. They were tested under fire so to speak before they got on the payroll. So that's how the recruiting was done.

[Referring to interview outline.] Now, "how organized and how were cases assigned" -- the trial lawyer operates of course with his inspector. That's the team. But the assignment of cases was done by what they call a calendar man, who in those days was Leonard Meltzer. He would go to court every day for the arraignments of the new cases. Of course cases were there were pleas of guilty, those were disposed of, they didn't need anybody's attention at all. But cases in which pleas of not guilty -- when the plea of not guilty was entered and when a trial date was agreed upon -- then an assignment slip would be made out, and the calendar man would assign it as he knew -- he kept track of everybody's case load. It was mostly assigned according to case load and according to specialty.

Sherry: Now although we had specialists like Wehr and Olney and Perkins and Coakley, for these various kinds of cases, there was still enough of the usual robbery, burglary and these unpleasant lewd conduct with little children cases floating around; everybody had to take his share of that as well.

You would come in the morning after the calendar was completed -- the calendar man would go to his office, and he'd dot-dash all his assignment slips and that kind of thing. He would come in, make the rounds of the office every morning and give all the slips to the fellows -- "Those are your orders."

The inspector assigned to you for those cases would also get a corresponding slip. Ultimately, of course, you put the case down on your calendar as to when it was going to go, and reminders to have witnesses at this particular time, and ultimately you prepared the case, you read the stuff, you talked to all the witnesses, and went down to court and tried it.

[Referring to interview outline.] Now, about hours and standards of conduct. Well, the hours were as long as it was necessary to do the job. Sometimes it was night and day, although if, for example, you were just all tired out about something, you'd say "I'm taking the afternoon off. I'm going to go play golf." You could do that, but it was impossible to abuse the privilege, because it was hard enough to squeeze time out yourself to take that kind of time off.

[Referring to interview outline.] Now, about standards of conduct. You were expected, sure as the dickens, to behave yourself and to pay your own traffic tickets, and never try to over-awe anybody by telling them you're a deputy district attorney and demand some kind of favor for that. The problem was compounded in those days, because until 1935 we were still living in what purported to be the "age of prohibition," although after about 1929, that was rapidly coming apart. There were still arrests made, and cases being tried, and so you mustn't ever be caught drinking publicly, anywhere, at all. What you did in the privacy of your own home was your own business.

So one would say that high professional and ethical standards were required, and also, by gosh, we had to behave ourselves. There were a few instances in which people didn't and bingo! next day they weren't there.

Sherry: That's just all there was to it. That was the end.

MF: You mentioned earlier that you were involved later on in personnel recruitment in the office?

Sherry: Yes.

MF: When was that?

Sherry: Well, most of that time was beginning about 1946, '47, during Ralph Hoyt's incumbency more than anything else, where we developed and really organized that thing more than it had ever been done before. We found out -- rather, we put down and made regular procedures out of what had been a traditional mode of doing things before -- no written records.

Always you have the problem of getting an authorized vacancy, getting a slot, getting more positions on the salary ordinance, and not being able to hire unless you had someone. Of course the time had gone by when you could get anybody to come to work for nothing. Things had improved very, very considerably. It was just not possible. Consequently, recruiting was a matter of people making application.

The office was well known. It had a splendid reputation as a training ground for great trial lawyers, and by heavens, the bar is still filled with alumni of that office, and very, very successful in the practice of law. Although conditions now, I don't think, are as good by a long ways as they were then, it was really something.

There was no lack of people applying for positions. We'd just open a file on them, interview, and stack them away. Then when the vacancy occurred, we would have made our evaluations and we would go through until we found the first high evaluated guy and call him, and if he said, "Sorry, I have a job," then you'd go to the next one. That's the way it worked.

Relations with other Law Enforcement Agencies

MF: What sort of relationship existed between the office and other county law enforcement offices?

Sherry: We had very good relationships with all the police agencies. We cultivated those relationships. Also with the city governments of the various cities. All of the cities in this area operated under the standard city charters -- except Albany -- which they've adopted.

You know, you used to go down to the stationer's store and buy blank forms of city charters! All of these provided for a city attorney, and some for city prosecutor, but in any event they contemplated that the city would have its own prosecuting officer for misdemeanor cases. Los Angeles still has that procedure. There is a city attorney who prosecutes misdemeanors and the district attorney takes care of the felonies. Many of the Southern California cities continue with that practice.

Now the trouble with that is that if it's a misdemeanor, right away, if you can plainly see it's a misdemeanor, then all right. The city can handle that thing. If it's a felony case, and that's plainly visible, the district attorney can probably handle that thing. But if the district attorney does not go along with a request by the police for a felony complaint; if he evaluates the case as a misdemeanor, the investigating officers have to start all over again at the city prosecutor's office to get a misdemeanor complaint. This procedure can be very time-wasting.

Although the charters provided for this kind of thing, when Earl Warren became district attorney, he said to the cities, "I'll provide all that prosecutorial service for you. I'll take that load off your back. All you have to do is supply us with the office space and such secretarial help as we need --"

MF: This is Earl Warren then?

Sherry: I don't know how new it was with Warren. I think maybe it just kind of grew up that way, but he firmed it up and made it a solid kind of a practice, because he could see what was -- you know, the population was growing and all that kind of thing. He was establishing a pattern.

Basically the reason for it was that it was to

Sherry: attain uniformity in the administration of justice in the county by having one single agency making the determinations of who was to be charged, what cases were to be tried, and to avoid the kind of thing that has happened in Southern California, when some gambler, seeing the police breathing down his neck or something for some serious offense would walk into a justice court with the connivance of the city attorney and plead guilty to a misdemeanor, just blocking off a felony prosecution.

There's so much time loss where you have these two offices trying to sort out cases. It's a most inefficient system. So we operated very efficiently. The cities were delighted to have the D.A.'s office do it.

We maintained continuous liaison with all the police departments. One of the inspectors' -- I think one of Lloyd Jester's more important duties was running around visiting all police departments on a regular basis, all the time, all over the county. As a former chief, of course, he had an entrée anywhere. So that the relationship of police departments was good, even in Oakland, where we had all kinds of problems, even in the sheriff's office where our office sent two under-sheriffs to prison --

MF: Yes. I wanted to ask you about that.

Sherry: This was -- And we convicted a couple of police officers of murder in Oakland, for killing a prisoner. Nonetheless we were able to maintain a good relationship with them.

MF: How about the courts?

Sherry: Well, there was no problem about the courts. The judges were good. They were getting excellent service, darn good trial lawyers. They had absolutely nothing to complain about.

We used to get -- Earl Warren himself used to get a little troubled about T. W. Harris, who was the presiding judge of the court, an old timer, a grand-old-man type, but very, very arrogant, very self-asserting, and that kind of thing. He had a different kind of local political alignment than Warren, particularly during

- Sherry: the graft paving scandal thing, when he once threatened to charge Earl Warren with contempt of court for releasing a grand jury transcript.
- MF: Oh yes. I wanted to get to that.
- Sherry: Earl Warren says, "All right, Judge, you just go right ahead."
- MF: Was Harris a Mike Kelly man?
- Sherry: No, he wasn't a Kelly man. It was simply that the paving graft scandals began to involve all the best people in town. The Hutchinson family that owned this crushed rock quarry -- you know where that new Safeway market is, down by the School of Arts and Crafts in Oakland -- there's that big quarry? That's the old Blue Rock Quarry out of which came that special rock, not to be found any other place in the region. The ordinance, the specifications for the contract, called explicitly for that kind of rock, you see, so they could manipulate prices and every other thing.

Well, the Hutchinson family were prominent in society, business, and finance and all of that kind of thing. Prominent lawyers were mixed up in it. This pressure was enormous. Reputations were ruined right and left. Of course they deserved to be. This thing just kept right on going, and of course Harris, through his son, was very close to a lot of those families, which I suppose today you would call at least a kind of part of the establishment. That's where the pressures came from.

Warren, in releasing the transcript, was taking a chance. But he had to release the transcript. He had to get this thing out to the public, what was going on in the grand jury room, where you'd ask a man his name and he would tell you that and nothing more; "Where do you live?" "I refuse to testify on the ground that it might incriminate me." "If you told us where you live, this would incriminate you, you thing?" "I refuse to testify." When that kind of think got out into the press -- the Tribune printed these things -- why here a distinguished businessman, claiming the fifth amendment to such darned silly questions. This was defiant, you see.

Sherry: When that happened -- oh boy. The public reaction was just -- Earl Warren was at the top of the wave at that point. So when Harris, outraged that he was releasing the transcript of the grand jury hearing as fast as it was being typed up -- it was highly irregular, but I don't think it was a crime at all -- Harris said, "You stop that, or I'll find you in contempt of court." Earl said, "Go right ahead." He knew that Harris didn't have the guts to do it, and wouldn't dare do it, because Harris didn't want to be identified publicly with these guys.

So Earl always had kind of the Indian sign on Harris. But Harris would retaliate whenever he could, once in a while in assigning judges, you know, and that kind of thing; he would be very uncooperative.

MF: Oh, that's interesting. I wanted to ask you what the rules were, then, governing release of grand jury transcripts.

Sherry: I don't know that there is any explicit rule on it right now. I don't know of any law about it. We had very inadequate --

MF: What was the practice then?

Sherry: Well normally, the transcript was never typed up until the hearing was all over and an indictment had been returned. And then it was typed up. When it was finished it would be delivered to the county clerk, at which point it became a public record.

MF: So it was public even then.

Sherry: Oh sure. After it was finished. Like the Angela Davis case, you know. Everybody found out what the evidence was when they filed a transcript over there in the county clerk's office.

MF: Yes, but I know for instance in the Bessie Ferguson case, the transcript was never opened because an indictment was never made.

Sherry: Oh, if there is no indictment, then there is no transcript. The reporter doesn't write up his notes. There's no transcript. No point in doing it. Just the same thing -- you get a plea of not guilty, or

Sherry: rather an acquittal. They don't write up a transcript. It doesn't serve any purpose. You just need the transcript in case there's going to be a trial. So I don't know.

There wasn't anything explicit in the law about this kind of procedure, but it was, as I say, highly irregular. It had never been done before, and was obviously being done for a purpose to serve the investigation -- you know, to let the public know what was being concealed behind the doors of the grand jury. That just worked beautifully.

I read the transcript myself. There used to be a copy bouncing around down here in the office. It was absolutely fascinating.

MF: I also read somewhere that California law made grand jury sessions open to the public in 1937 if they wanted it to be.

Sherry: Well, on the petition of the attorney general and with the consent of the district attorney and the grand jury, the grand jury can have a public session. That is possible. I don't know -- it may have been used. I have a faint idea that it has been used maybe once or twice.

MF: In this county?

Sherry: No. Never done here that I know of. I remember during the crime commission days in the 1940's when Fred Howser, then the attorney general, demanded that they have an open grand jury hearing up in Sonoma County in connection with a gambling operation with which he was connected. Which wasn't granted.

That has just not been used. I suspect that that probably had its origins in Earl Warren's recollections of the problems that he had at that time. That had not been an open grand jury hearing. Of course he accomplished the same thing by handing the transcript to the papers, published by the Tribune, every word, day after day. [Laughter] More fascinating than the funnies!

Relations with the Press

MF: That gets us into the question of what the relationship was between the office and the press.

Sherry: Well, the relationship was very good. The press in those days was a more considerable kind of a press than we have now.

We had two newspapers in Oakland, the Post-Enquirer as well as the Tribune. Both of those papers had a man at the courthouse. Both of them had a man in the city hall. The San Francisco Chronicle and the Examiner had four men over here also with the same kind of distribution. There were always a lot of press around, and then if there was a big case of some kind or another, they would send more people.

Press manpower was far more available then than it is now. There was a lot more personalized or personal kind of reporting. We all got to be great friends with the newspaper reporters and they knew us. We knew who to trust and who not to trust, and it was just a perfectly splendid working relationship.

We had only one problem that I can ever think of with the press, and that was with the Tribune, and that was when Ralph Hoyt was district attorney. It was, I guess, about 1947. It must have been in 1947 that a seventeen-year-old girl, a nice girl, was seduced by a wealthy good-for-nothing jeweler in Glendale, and to get away from him she came up here to one of the state colleges to go to school. It was a family effort to separate those two. He was a married man with a bunch of kids. He just went head-over-heels for this child. So he came up here for a reunion with her, and he shot and killed her in a motel down in the San Leandro area.

Well we had -- the newspapers came out with this "Clair de Lune murder case" -- because here's the corpse, and on the phonograph by the body is a record of Clair de Lune, a very corny version of that day. And there were some kind of flowers -- red carnations. Another headline was, "The red carnation murder case." Well, that was a nineteen-day wonder. But we hadn't the faintest idea who she was or what had happened. Our only clue was that we found out that she had gone to school in Alameda.

Sherry: We began trying to find out, gradually, throughout the night, and then all the next day, finally got all the identifications down, and in the course of that we understood that she'd been out with a man who was alleged to have been at Moffet Field, which was a naval air station at the time. The commanding officer phoned up and said that one of his officers had been out with her and dated her while she was at school in Alameda. We wanted to talk to him, and he said, "You could talk to him." He preferred that we have this up at the office, but on the assurance that there be no publicity. Well, what do you do? Say, "Okay, no publicity." But with all those newspaper reporters around, when our inspectors go roaring out of the parking area to go down to Moffit Field, the newspaper reporters know something is up, and they know that when the inspectors go away, they'll come back. And when they come back, they are going to hassle them.

Well, they came back, and they had this naval officer. And the inspectors knew what was happening, too. At the courthouse there's a driveway that goes down from the street -- that big steel door there -- down into the basement. Well the cars came up and instead of parking at the curb that big door suddenly came up and the automobile with the naval officer started to go down in. That enraged the reporters, and there was a photographer there. Just as he was about to take his picture, why Jester or one of the inspectors turned the camera down, so all he got was a picture of his toes. The door clanged shut, and boy they were mad. Gee, they were just absolutely outraged at that.

We hadn't had any time at all, in the circumstances to get hold of city editors and tell them what the problem was, in the middle of the night. We just had to do it that way. Then of course he was smuggled out again. Of course they found out who he was. Of course that gave it all the bigger play, when they finally identified the naval officer secretly interrogated by the district attorney. Oh, murder!

MF: I can see the headlines.

Sherry: Well, anyhow, Al Reck, who was then city editor of the Oakland Tribune, thereafter never printed Ralph Hoyt's name in connection with any story out of the courthouse. He would quote deputy district attorneys and assistant district attorneys. He would never mention Ralph Hoyt, district attorney. He kept that up and continued it for

Sherry: a period of about six months. Then the election, I think, was coming up and Ralph was getting mighty upset. But that's the way it was. They finally stopped.

But apart from that, there wasn't any -- no problems with the press that I can think of.

The Knowland Family

MF: I guess one of the things that we have been trying to get to, in studying this period, is what the connection was, or the relationship between the Knowland family and Warren.

Sherry: Well, I can't tell you the whole of that story, because it began long before I got into the picture.

When Earl came to Oakland and began the practice of law here, Joe Knowland was then publisher of the Tribune. He'd been a member of Congress. He'd been in the legislature. He was very, very active in the Republican party, with which Earl Warren, then as a young man, was affiliated.

When Earl Warren became district attorney, something that Knowland had nothing whatever to do with at all, they knew each other, they were friendly. Knowland always gave the district attorney, with this one exception that I told you about, a good press, and good editorial coverage and all that kind of thing.

Earl insisted on the nonpartisan quality of the office; it's nonpartisan by law, and by gosh it was going to be nonpartisan. He had Democrats in the office back in the days when you had to hunt a Democrat, hunt to find one. Nobody was asked his political affiliation at all. There was absolutely no inquiry made that way.

You probably know that Frank Coakley managed the Al Smith campaign. Actually, he was vice campaign chairman.

Mr: I was just going to mention that.

Sherry: There wasn't any partisan pressure from the Knowlands. But there was friendship certainly, by all means. There was a great deal of friendship. Joe's son Bill Knowland then went to the legislature, and he was in the legislature when Earl Warren was attorney general. As attorney general, he would be interested naturally in legislation, and Bill would carry some of it for him, not the law enforcement stuff, but anything else that the attorney general was interested in.

So I never could detect anything there at all except just friends. There certainly was no impact upon the operations of the office. I never even -- I met Bill Knowland early in the game, but I never met the old man, Joe, until after he retired and was giving his life to the business of restoring the old California missions and that kind of thing. He was a good philanthropist, and all that. I came to admire him very much. He was a great guy, a very charming old guy.

MF: Yes. Mrs. Fry did an interview with him.

Sherry: Joe, that is? Before he died?

MF: Yes. This was probably not too long before he died.

Sherry: Yes. Well, he was a great guy. So that 's about all I can say about the Knowlands.

[Referring to interview outline] "Political parties and political campaigns" -- there were none, so far as I was concerned. The office was never involved in any kind of political campaigning at all, except for the district attorney's office, and all the time I was in the office, there, Earl had only the token opposition of T. L. Christian.

Have you ever heard about old man Christian, who always ran against Earl Warren? It didn't cost anything for filing in those days, and he was a fine old guy. He said, "You don't want to let Earl Warren get away with everything down there, you know, and think he's not going to get any opposition!" Every year he would file: every election year it was Earl Warren and T. L. Christian, candidates for district attorney. Christian-- we'd run into him in the courtrooms or around the courthouse,

Sherry: and he'd say, "Now don't you worry, Bill," or "Don't you worry, Tom, when I become district attorney, you're going to keep your job!" He would get a token vote. But that was all.

The only campaign that that office ever had in my experience, was the first time Ralph Hoyt came up for election. That was the first political campaign that I ever became involved in to the point where I was out pushing doorbells and that kind of thing. But otherwise, you would never know when Earl Warren was running. You could tell, when somebody would come around and leave a few of these small hand-cards, "Earl Warren for district attorney." If you wanted to pass a few out, you know. That's all there was to it.

Methods of Criminal Procedure

MF: I'd like to switch gears a bit here, and talk some about criminal procedure.

Sherry: Well, law enforcement experiences, the interrogation procedure, was a very well-organized, very -- there were very, very definite kinds of routines, which would take me another hour, I suppose, to explain, so let that go until another day.

Search warrants were almost never used. I never drew a search warrant in my life until we began having to get into these places where they were running the private lotteries that began operating here in the late 1930's.

You didn't need them, for ordinary crimes, because first of all there was no exclusionary rule. There was no inquiry into how the evidence was obtained. There wasn't any law of arrest at all, basically. There would be a search warrant once in a while, if you wanted to get into a safe deposit vault, for example, or if you wanted to get into a warehouse where there was gambling equipment stored or you thought there was. But it was pretty rare.

Secret listening devices were absolutely barred by Earl. He would have nothing whatever to do with them. Wiretapping was explicitly forbidden.

- Sherry: In the King, Conner, Ramsay case, in that one, someone taped -- or rather, they had some kind of listening device, I think in King's office in San Francisco. Now who was responsible for that, I have no idea, but Earl wouldn't permit it to be used.
- MF: Yes, I have several questions about that. In the King, Ramsay, Conner case, Oscar Jahnsen told us the story about how he taped a microphone to a table leg in a hotel room. They were working with one of the witnesses who had set up a meeting with several people that included King, and they had --
- Sherry: Well, he would know more about that than I, because I was working in Berkeley at the time that case was going on. I didn't know much more than I saw in the papers.
- MF: I remember that Oscar Jahnsen also told us that several years later, in the Methias Warren murder case, Bakersfield police chief Bob Powers asked Jahnsen if Warren would permit the use of a hidden microphone, and Jahnsen at that time said no, that it just couldn't be used.
- Sherry: Well, that's because he probably got burned pretty badly for using the one in the King situation.
- MF: I was wondering about that.
- Sherry: Oh yes. Oscar tended to fly off in rather emotional kinds of ways once in a while, without telling people -- a little flamboyant.
- MF: I've been doing a study on that case and I've been reading the records in the D.A.'s office. There are typed transcripts of those taped interviews that were picked up on that mike. At another point they put Ramsay in a cell in the Piedmont jail that had a microphone in it, and they also transcribed that conversation.
- Sherry: Well, that would be between Ramsay and whom?
- MF: Well, it was between Ramsay and Murphy, who was one of the witnesses who had been picked up right at the beginning.

- Sherry: Oh. That I didn't know about. In any event, this was undoubtedly again done without Warren's knowledge by an investigator, because he most explicitly -- No tapes were used in the King, Conner, Ramsay trial, I'm sure.
- MF: No. No, I think the inspector said that they were used as aids to get clues.
- Sherry: That's because they were desperately hunting, and "What the boss doesn't know isn't going to hurt him any." That happens lots of times, but they just weren't doing what they were supposed to be doing, that's all.
- MF: Well, that clears that up in my mind.
- Sherry: We had no equipment. I don't know of any police department around here that had any equipment. Some of them, if they got anything, they had to borrow it. So I just had no experience --
- MF: I see. Did Earl Warren encourage the use of "copping pleas?"
- Sherry: Oh, that. No, that's "pleading to a lesser charge"; that is where a man is charged with burglary and you let him plead to petty theft and all that.

No, we tried -- the philosophy of the office at that time was to try to charge the cases for what they were worth, and then in a situation in which a plea to a lesser offense would be taken, it would be carefully examined and determined whether or not that was an adequate disposition of the case.

But we weren't so pressed with backloads of cases as prosecutors are today. We could take our time. We were hard people to bargain with, particularly with the theory that we charge them right in the first instance.

So, it was done, it has to be done, it must be done. Many times you'll find you've got your case all prepared and it just isn't there. Maybe you have a missing witness, or maybe a witness is not telling the story that he told before, situations will occur where you want to make some disposition of the case, so you will listen to an offer of negotiated plea.

Interrogations and Confessions

[Interview II, March 12, 1971. Interviewed by
Miriam Feingold and Amelia Fry]

MF: When we left off last time, you had just begun to talk about criminal procedure.

Sherry: You want to talk about questioning, taking statements, confessions, and that sort of business.

Well, ordinarily, in the olden days, as now, all that kind of investigation is done by police investigators, more now than then. But that job is almost entirely a police job.

The two exceptions that were then important, and I think still are, are not the usual kind of cases, but cases of some considerable complexity. A big conspiracy, corruption in government, something of that sort which normally would go to the grand jury, would not be the kind of thing that would come to the police department in any event, corporate securities fraud, that kind of thing, business frauds of one sort or another. Most of the investigation in those cases is handled by the people in the D.A.'s office, because they're equipped to handle it whereas policemen aren't. The police can understand, you know, Peter striking Paul, and that sort of thing, but a complicated fraud, where you need experts and accountants and all that kind of thing, the police are out of their depth.

The other exception that we had in the office was homicide cases. Warren Olney and Charles Wehr were the homicide specialists in Earl Warren's time and thereafter, until they left the office. They originally did all of the work in that area, but later on as time went by and while they were still in the office, other deputies in the office got into the same kind of a thing. We had an assignment kind of a business where for a month for example you would be on call for homicide, if you were a deputy.

All police departments in the county had a little sign, "If there's a homicide call" -- you know, this month "Joe" or whoever it may be, usually one of the inspectors in the office. The inspector then would call a deputy and then he'd go around and pick up a secretary, a reporter, who would record the

Sherry: conversation, and oif you would go to a hospital for a dying statement for example, or police station, or whatever the case may be, in the middle of the night or the middle of the day. It was very gung-ho stuff for young deputies, really seeing-life-in-the-raw kind of business.

The normal and ordinary procedure in these things would simply be to interrogate the accused and whatever witnesses the police may have still on hand and get it all down in the shorthand reporter's notebook.

There wasn't any particular kind of technique involved in the thing. It was a simple matter of interrogation, the way a lawyer will interrogate any client or witness, in which you focus on -- you have in mind, what the particular elements of the crime are involved, and you interrogate to ascertain what those may be, what those situations might be.

For example, you would always anticipate that there might be an insanity defense, you know, so you would always ask the individual, somewhere along the line something about his health, his hospital experience, if any, if he'd had any kind of mental treatment, been in that kind of a hospital, or receiving psychiatric treatment, that kind of thing. So you would have a good idea of whether or not there was anything important in this kind of an area and foreclose what was not uncommon in those days, what would be a rigged-up insanity defense in a particular case.

That generally was done in the homicide cases simply because they were important cases, of course. Some police departments, Berkeley for example, kind of bucked at that because they got it into their heads that "We can investigate cases as well as you guys can!" So we said, "All right, go ahead. We'll interrogate after you're through." So at Berkeley, we would come out and sit around and have a cigarette or a cup of coffee while the detective in charge of the case was finishing up with his interrogation and then we would go -- he of course would do it with his own handwritten notes and that kind of thing, whereas the stenographic statement on the record is by far the better way to do it.

The important thing I suppose, in the light of what has happened in that connection, was what do we

Sherry: tell a man, for example, if he suddenly says, "Do I have the right to see a lawyer?" or "Do I have to talk to you?" In which event all we said was "You surely may, you have a right to have a lawyer; and you don't have to talk to me." We would tell them precisely in that situation.

We were a long way ahead of Miranda and all the other kinds of warnings now that are required in that kind of circumstance.

MF: Was that unusual for the time for you to --

Sherry: I don't think so. That's a lawyer-like thing to do. Everything is being taken down. Oh, there's another technique. This is just a lawyer's practice in this kind of thing. For example, if I were going to take a statement from you this afternoon, a shorthand reporter would have been in this room before you came in, so she can testify that she was here when you came in and she recorded every question asked and every answer. Nothing off the record. Nothing is off the record whatever. The reporter will take everything down. If I'm interrupted by a telephone call, she'll write down what I say, what she can hear of my telephone call, so she can swear she wrote down every word that was said in that room from beginning to end.

The person to be interrogated is introduced to everybody in the room. That all goes into the record, so you know everyone who is there and who he is and what. Then "What is your name?" "your address?" "Your occupation?" and "We understand that you've been in an automobile accident" or "you've had some problem with your wife" or whatever it is. Then you go on and start talking.

Now when the question would be asked, "Do I have a right to have an attorney?" you can't play games with that if you're working on the record. We never did. We never wanted to, and so we would say, "Yes. Do you have a lawyer?" Of course they don't have a lawyer and wouldn't have the faintest idea of where to get one.

They might ask, "Do I have to talk?" "No, you don't have to talk, you don't have to answer any

Sherry: questions at all. But if you are willing to talk we would be interested in talking to you about the situation." Almost always they continue talking. That's true to this day, in the normal run of crime, particularly homicide. The individual who has committed this crime is just full of an urge to explain why he did this terrible thing. It was, you know, necessary. You can't shut them up. You can't today you know, with the Miranda warning, which is in writing, you have to interrupt and say, "Wait, sign this first." It's just psychologically part of the situation.

The only persons I can ever remember encountering who would raise the question about the lawyer or "Do I have to?" were people involved in frauds of one kind or another, fast-talker types and that kind of thing. "Do I have to talk?" and that sort of thing. There have been occasions when they'll say, "Well, if that's the case, then I'm not going to talk." "Okay. Good afternoon, goodbye, that's the end of that." But most of them, even if they raise this issue, most of them, having a great talent for conning people, which they do, figure that they can con the man who's talking to them also, you see. So they're very interested to tell their side of the story.

In taking statements, as we called it at that time, it wasn't important that one get a confession particularly. It was important that one got a conversation, because it would either be an acknowledgement of guilt or it would be some kind of a con job to try to justify or mislead and that kind of thing. The more the people were willing to sit back and let them talk and talk and talk, then it's very simple to go out with this story and check it and check out the falsehoods you see. Actually in a trial it's much better to put in, in many cases, what seems to be a good explanation and prove it all to be false. That's part of the thing.

We had one case that was called, it was a kind of a ninety-day wonder around here many years ago, the Captain Page murder case. Military rank was a matter of great importance back in our pristine days of the 1930's, and this was an ordinary guy who happened to be a reserve officer-- how he ever got to be I don't know. There weren't many of them around but he liked his title, so he was referred to as Captain Page.

Captain Page got mad at his son one day. He lived

Sherry: on, oh, Benvenue or Hillegass or one of those streets south of the campus in Berkeley, and shot and killed the youngster with his army automatic. Shot his son. But he didn't die right away. He was taken to Alta Bates and died there. He was about fourteen or fifteen years old. Captain Page had the pistol hanging on the back of the door to his room. He was living with his mother, the boy's grandmother, and the boy. The mother was gone or dead. I don't know what. In any event, there were parent-child problems, and he killed the kid. He was mad. Shot him.

I interrogated Page in the Berkeley police station. I was then doing that kind of thing. At that time I didn't know anything about an army pistol, an automatic. I knew very little about firearms. I knew about rifles and that sort of thing, but I hadn't much to do with pistols. And his story was that he was showing his son how to pull the slide back, and demonstrating the use of the thing, when he accidentally let go of something, and bingo, it was a completely accidental shooting.

So I just had him repeat about four times, precisely every movement that he made, everything that he did. I came out -- it was just accidental, you know. I didn't know how one could prove to the contrary. We knew from the boy's grandmother, this guy's mother, she heard the angry voices that sort of thing, and told the story of what really was a murder.. But of course by the time of the trial she wasn't talking any more about the case.

As it turned out, this routine that I had taken him through on how the weapon was discharged was decisive. As a matter of fact, it's impossible for an automatic to be discharged in that fashion. So, the end of the case, an expert in firearms from the Presidio at Monterey came up and said, "You just can't discharge a 45 automatic that way," and demonstrated it right in front of the jury.

This is just a matter of -- one of the ways you go about interrogating people and why you need to get this kind of stuff in advance if you can. Well, what more about that --

Fry: Could I ask a question? I'm not quite as knowledgeable about this as Mimi is, and we are interested in the practices that later on were considerations in the

Fry: Miranda case. Did you say that the practices in the Alameda County D.A.'s office of always acknowledging to the person that he can have a lawyer --

Sherry: If he asked. There was no warning. There was no requirement for that.

Fry: There was no previous warning? Now can you fit this into the context of other police departments and other D.A.'s offices and so forth in California at the time? What do you think the regular practice was?

Sherry: Well, police would bring all kinds of pressures from time to time. Police basically, particularly in those days, were not well-informed. They didn't know the technical rules of what's a voluntary confession. If you could get it out of a man without hitting him, why it was a voluntary confession.

I remember one time having an interrogation in the Berkeley police department, with a guy on a fraud thing of one sort or another. I talked to him for an hour or more and he just wasn't -- "it just wasn't so; it wasn't true." He wasn't giving me anything. This very nice police officer who was in there said, "Well, let me go off for a while with him. Let me see if I can't get him to talk." So they went off together. Pretty soon the man came back and said, "Well, I'll tell you what it's all about." And he did.

MF: What happened?

Sherry: Well, then I discovered afterwards that the police officer had told him, "You'd better talk to the deputy district attorney and tell him all about it. You know your wife's involved in this thing too." She was, very peripherally. We had no idea in our heads we'd ever do anything about her, but he said, "If you don't tell them what happened, your wife's going to be arrested."

Fry: Oh. He knew little threats to put in.

Sherry: Yes. You know, that kind of thing, which of course is the purpose for the Miranda warning, because it was to insure that that's given.

Fry: Was this a general practice that Warren himself made sure was followed in the office?

Sherry: Yes, sure. Yes. He was responsible for the training program and the whole thing. That's the way it had to be. So we didn't use that confession. That's the other side of the coin. I wouldn't use it -- oh no, no -- when I found out what had happened. Even under the rules in those days it would have been involuntary confession, because, gee, way back, one of the early cases in 1888 or something, the deputy sheriff told a man, "It would be better for you if you tell the truth." So he told, and it's an involuntary confession, because there was an inducement. That meant he talked because there was something held out to him.

The law in California on involuntary confessions has always been very, very strict. Any kind of inducement, promise or threat, anything -- any kind of coercion at all would invalidate a confession. "It would be better for you if you tell the truth." What could be simpler and low-key as that? But the California case in the Supreme Court -- it's involuntary if you do that.

MF: How does this compare with the Los Angeles and San Francisco D.A.'s offices?

Sherry: The practice is about the same.

MF: Were they?

Sherry: Generally, yes. Generally about the same. Alameda County was far more highly organized and far more well-developed in this area than San Francisco ever was. They kind of played it by ear over there, and they still do --

MF: You mean in an investigation?

Sherry: Yes. The district attorney didn't participate much in investigations. The district attorney's office in San Francisco really didn't amount to a darn until Pat Brown became district attorney, with Tom Lynch and Norman Elkington as assistants. They really set up a good office and they ran it independent of the police department, which is the refreshing thing about that. The police department's running the office again now. So they've lost ground.

Los Angeles always had high standards and good

Sherry: personnel, lots of resources. But we, I think, were leaders in the field in investigative and trial techniques and that kind of thing, and did a lot of -- took the lead in internal education, you know, on-the-job training kind of thing. In various district attorney meetings and that kind of business, the office was the one that talked about the new styles and new endeavors and how to do it right.

MF: These were mostly innovations of Warren's?

Sherry: Well, it was because he was just -- every day he was living that office and doing that job, and it had to be done right. He insisted on that. It just had to be done right.

The first time in my experience at all that anything like a political implication or a political influence was ever felt in that office was after Roosevelt's election, with the passage of the National Labor Relations Board Act legislation, you know; reorganization and structuring of labor. At one of the famous Saturday morning meetings, the Chief Justice [District Attorney Warren] said, "I have subscribed to 'So-and-So's Labor Letter; we're taking the Federal Register," -- you know, all this kind of thing -- "we've got to learn this stuff, you know, it's important. It's new!" No one else would have thought of that at all. So we began getting all these publications. As one of the oldtimers in the office said, "very avant-garde kind of stuff." Unfortunately the Federal Register is about as much fun reading as the telephone book. The Labor Letter was terrible; but at least our eyes were opened to this new unfolding world.

Coordination of Law Enforcement

MF: I gather that all of that presupposed a certain amount of cooperation between the police departments and the county and the D.A.'s office?

Sherry: Oh sure. Yes, yes, yes. We had one inspector who would do nothing except visit police departments. That was his whole job. All day long he would go from one police department to another. "What's doing here?"

Sherry: He served two functions: to find out how they were getting along -- "Are you getting along with the deputy district attorney that is assigned to you, and the judge, and what are your problems?" Then he would also pick up intelligence, you know. "What's going on?"

MF: Yes. That was Lloyd Jester, was it?

Sherry: No. Before Lloyd Jester it was -- oh gee. Baxtrom? Something like that. I don't remember the guy very well. He's long since gone. But that's all he did. Jester did it when Jester came in, because he had been a chief of police and he was a natural for that kind of thing.

MF: Yes. In Albany.

Sherry: But that had started out long before.

MF: And then Warren was also very involved in the D.A. associations wasn't he?

Sherry: Oh yes. Yes. Not only that, but he encouraged people in the office, even bottom deputies, to go to the D.A. conventions. He would get money out of the board of supervisors to pay your travel fare, or we would get a county automobile so you could drive to the darn thing. Then he would get some money to pay for your hotel room, or whatever it might be. He was very, very good about that.

Legislative Work

MF: And then would you become active on committees and things?

Sherry: Well, the only committee of any consequence in that association then and now, to this day, was the Law and Legislative Committee. That's the one that heads up the entire legislative program on law enforcement for the legislature. The district attorney of Alameda County, then as now, was the chairman. It was a joint committee of the Peace Officers' Association and the District Attorney's Association.

Before and during the legislative sessions there

Sherry: would be these conferences with representatives from all over -- these were usually in Oakland at the courthouse -- where all the legislation, the bills, would be reviewed and that kind of thing. Pamphlets would be published, setting out the contents and what the position of the joint committee was, for or against.

Warren was the first one to send a representative up to Sacramento to be there, a legislative counsel or lobbyist, or representative of the D.A.'s and the peace officers. He took care of the expenses of whoever went by having them also designated as Alameda County's representative, you know, on the civil side also, for legislation affecting Alameda County, apart from criminal legislation.

I guess Frank Coakley was the first one who went off on that assignment, and I think Dick Chamberlain followed him, after several years, and then Cecil Mosbacher was there for three or four years, and then I had a year up there on that assignment, 1949, or '50 I guess it was -- no, '48-49.

Now, of course, it's a very highly regularized thing. They've got an office and the man has an apartment, you know, all that kind of thing. I lived in a back room of the Senator Hotel. There was no stenographic help, no nothing. I typed out my own drafts of legislative bills on a typewriter in my room.

It was a very, very useful experience. If you're there every day, all the time, talking to the legislature, legislators, and going to all the committee hearings and that kind of business, so that you keep in touch with what's going on, you can be very influential. D.A.'s and peace officers to this day constitute one of the very, very important voices up there. Anything they don't want, you have a battle getting it through. I don't think they have the same amount of clout that they used to have -- at least they keep saying they don't. It's still pretty important.

MF: Can you remember some of the major legislative issues in the thirties?

Sherry: Oh, well, in my time I don't think there was anything really very major. The only really big one that I can think of was when Frank Coakley was up there and Judge Wollenberg was assemblyman from San Francisco, and was

Sherry: a committee chairman of some sort or another. There was a big battle over the conspiracy law, to make conspiracy to commit a misdemeanor a felony. All of organized labor was opposed to that sort of thing. That was a big battle. Frank Coakley called every district attorney over the telephone that night. They had a call of the House, you know, everybody in the House had to stay there until they acted on the darn thing. Telegrams began coming in, in response to the telephone calls, so the thing was finally passed.

There were a variety of little things. In 1948, when I went up there for the session, we had the sort of thing that is so typical of legislators and governors: we had a bill in for a mandatory jail sentence for anyone convicted of driving while intoxicated. You've got to throw him in jail! No other possible way of treating him. Goodwin Knight tried the same kind of thing several years later.

This was just completely unrealistic. The judges would have to play games, just as they do now over the narcotics laws, the same doggone thing. And the district attorneys would have to play games, use the ordinance "being drunk around an automobile," which did not have all of the awful consequences of being connected with driving while drunk. My gosh, you've got a truck driver with a wife and five kids, throw him in jail, he loses his job, everybody goes on welfare. The very fact of being arrested and having to pay an installment fine is plenty for a guy like that, you know. It's a crazy idea to put him in jail.

We went up there with a program not only to wipe out all of this mandatory stuff but to lessen penalties and to give the judges more power to admit to probation than they then had under the law. So we weren't up there all the time, you know, wanting more and more penalties and being tougher and tougher. Basically we were interested in procedure for keeping things going so the system could operate.

But there were no big issues, except for some abortive efforts to strengthen the gambling laws.

MF: I seem to remember reading about a series of amendments in 1934, to the state constitution, one of which

MF: allowed a judge to comment on the evidence --

Sherry: That's the "comment on the evidence" thing, you know. That was back in 1934 and that was part of the reform of those days, which continued and wound up ultimately in 1949, in the reorganization of the inferior courts. This was a two-part bill. It was a constitutional amendment, so it wasn't in the legislature. It was a constitutional amendment, I think, proposed by the legislature.

That was the bill that set up the attorney general as the chief law officer of the state and gave him the power of supervision over sheriffs and district attorneys. I don't know why no one thought of chiefs of police, but they left them out. There was in addition this "comment on the evidence" thing, because a lot of people thought we ought to follow the English practice, and the federal practice of the United States courts, "comment on the evidence," and that kind of business. There was also the "comment on the defendant's failure to explain or deny," which has now been ruled unconstitutional in Griffin versus California, a fairly recent case, with Chief Justice Warren abstaining, because he was one of the advocates of that in the legislature.
[Laughter]

MF: Whatever happened to the other one, about judges commenting on evidence?

Sherry: It's still law.

MF: It is?

Sherry: Yes, but they don't do it. It's hard work. If you want to comment on the evidence, you've got to be scrupulously fair. You've got to be very, very careful that you do an even-handed job. That means, you have to go off and you have to write it out. It takes time, and you haven't got time. You don't do it.

MF: Yes. I could see that, especially today.

Sherry: Originally, after that became law, a lot of judges began commenting on the evidence, but all they were doing was making a seconding speech for the prosecution, basically. Just shooting from the hip. They weren't careful about the darn thing, and they got reversed all over the place.

Sherry: One judge we had in Alameda County -- I'm having memory problems again -- Frank Ogden it was, one of our very, very capable judges. In a murder case we had there, an extraordinary murder case, of a man who married three trusting women in sequence, took out insurance on them --

MF: Oh. The Gosden case?

Sherry: The Gosden case. Yes. He commented in that case, but he had written comment, and that of course is now in the opinion on the affirmance of the conviction in that case. Judge Ogden's comment was sustained, because Ogden did a perfectly fair, very scholarly job of it.

MF: That was one of the first uses of it, wasn't it, that case?

Sherry: Oh, no. There were a number of others before, and there have been a number after. There are a lot of scattering opinions now, where a judge makes some unfortunate comment during the course of a trial or after, where they save the error by saying, "Oh, a judge is empowered to comment, and this wasn't prejudicial in any way." But it really hasn't changed practice. We're not geared up to operate the way the English judges do. It's a different life style that they have, completely.

Graft and Gambling Cases

MF: Shall we get on to discussing some of the cases?

Sherry: All right.

MF: It isn't going to be exhaustive. [Referring to interview outline] I just put down some of the highlights. I didn't know if you could talk about them or not.

Sherry: Some of these -- the bail bond scandal, and the paving scandal, for example, the graft cases involving the sheriff's office, all occurred before I was in the office. Frank Coakley -- I think you've talked to him,

Sherry: or somebody's talked to him? -- he tried the sheriff's case, and got convictions in those cases. He was in also on the paving case; I don't know about the bail bond -- well, you've talked to him anyway. You would know about that.

But these were the cases where Earl Warren suddenly burst upon a complacent public as the real crusading district attorney type. Everybody sat up and took notice. They had never thought that things like this could be taken care of as they were. Now, the gambling cases --

MF: Oh, if I could just ask a couple more questions about the graft cases. Somebody was telling me that the Ku Klux Klan was very much involved in that graft case, which is why they had so much trouble? I don't know any more than just that.

Sherry: Yes. There was one of the guys involved in that, whose name was Garbutt. He and a companion came out here and were Ku Klux Klan organizers. Of course that was a great racket too, you know. You came out in a time, in a day, when there was a great deal of popular feeling against Jews, Catholics, and colored people. Being a Catholic, I know what an oppressed minority is like, having grown up in this community.

But they came out with this doggone Ku Klux Klan business, and it really didn't mean anything to these characters except that everybody who was inducted into the Klan had to buy his sheets and insignia and that sort of thing, and it was five dollars a head or something like that. So they'd organize these thousands of guys at five dollars a head and have a big thing on the hillside with a burning cross and all that kind of business. It was almost childish really, looking back on it.

Some people took it seriously, and in Oakland the Klan decided to have a parade, a public parade, you know, in opposition to the St. Patrick's Day parade or something like that. The Knights of Columbus, to which my father belonged at that time, went down and served notice on the chief of police they wouldn't wear masks because there was an ordinance at that time, and there still are ordinances, that prohibit the wearing of masks in public places -- which I think

Sherry: make a lot of these motorcycle helmets with the opaque -- you know -- make them quite illegal.

These were in the ordinances, and there it was, so they conditioned the permit that no Klansmen would be masked, you see, and they could march down Broadway, where it was. The anti-Klansmen were out there bright and early, all with their little Brownie cameras [laughter] to take pictures of all of these guys. The parade just kind of melted, you know, disappeared, because they really -- they'd paid their five bucks, and so that was that.

But in any event, Garbutt and his companion, got connected with the -- promoted the sheriff's business; you know, took over the protection of the bootlegging places and that kind of thing, and got themselves thoroughly wound up in everything, the doggone paving scandal, as I recall. But they were just a couple of fast-talking con artists who came in and lived by their wits for two or three or four years. They would move in on what-ever kind of a racket was going on.

When Warren came along and began knocking these things out, of course the field was destroyed for them. I think they were convicted too, as I recall. Both of them were convicted of something at that time.

But that was before I was thinking of the district attorney's office or even knew much about it. But I do know about the gambling cases, if you want to go to that.

MF: Okay, let's go on to them.

Sherry: Well, the gambling laws in California are a queer, strange, patchwork. During the twenties and the 1930's-- the twenties and the prohibition era, and there-- after in the 1930's -- Contra Costa County operated pretty wide open. It was pretty well corrupted. Everybody was on the gamblers' payroll, and everybody knew that. It was to Alameda County and San Francisco as Nevada is to California.

Rancho San Pablo was a great big gambling joint out just beyond El Cerrito, over the Contra Costa

Sherry: County line, and Black Jack Jerome, he was called had a dog track out there. They were running a dog track, which was a flat, open, violation of the law. It was a huge, big thing, thousands of people, parking lot, all this kind of business, completely illegal in California, but well controlled and directed by city officials of the city of Richmond, who walked a fine line between being corrupt and keeping Richmond clean. Nothing could go on in Richmond without Carlson's knowledge. Richmond was, you know, just right, but the rest of the county was wide open. The sheriff's office was bought off, and the little cities didn't amount to a darn.

They always kept trying to move in here, you know. Get a slot machine place somewhere, or later on when the pinball machines came out, and that kind of thing, they would keep moving in. And the little lotteries too, the private lotteries and that kind of thing. Earl Warren reacted very strongly. Whammo, there would be a seizure. We -- the district attorney's guys and the police -- wouldn't go into a place and just arrest somebody and leave the slot machine there. We'd take the slot machine too, you see, as evidence. This hurt. Every place else where they were running, once in a while they'd make a few token raids, you know, and they'd arrest a few operators. It would cost \$15 bail and the machine was still running while they were gone. It didn't make any difference.

But there was so much money in that, that you'd be surprised how much money you can make on those slot machines. They're just enormous. A good slot machine at a decent location, in a corner cigar store or something like that, was good for about five to eight hundred dollars per weekend, just Saturday, Sunday, you know, it'd take for one of those things. And they're all alterable. You can change the reels. You can get liberal, conservative, or middle reels. You order from the manufacturer the way you want it.

The Orinda Country Club started up about that time. My first inkling of what this kind of a world was like was when my father was president of the club out there, and some of the guys thought it would be a great idea, since there were slot machines all over Contra Costa County, they ought to have them in the club. It would be fine you know. Have it in the locker room, and that would help for some of the expenses.

Sherry: They got the sales material from Mills Novelty and some of these other outfits in Chicago, ordered from them, and were interested in buying, what were the prices? -- and that kind of stuff.

Within a week of having sent in that order, they were visited by a deputy sheriff, who said, "We hear that you're interested in ordering a slot machine. You don't buy them from Mills. We take care of that for you, you see." [Laughter] Oh, it was really something.

They went along with the darned thing, and they got the machines, and they got machines that were set to, I think, pay something like \$60 back out of every \$100 put in. Forty percent take on the darn thing. But that was too liberal for the county, and they were visited again and told they would have to change the reel because they weren't getting enough money out of the machines. The club was getting too much of the take. They wanted a different arrangement. At that time, they said, "Take the machines away. We don't want them." They began to see what they were getting into.

Now there was a decision by the Court of Appeal during these days -- it was argued by a lawyer who was also a member of the legislature, who represented Mills Novelty and various other companies -- in which they got an opinion out of the court, very, very strict wording of the penal code section of that time, which said that it is unlawful to possess or operate, use, transport, that sort of thing, any slot machine, defined, which is used for obtaining money by chance.

This was interpreted as saying that you couldn't confiscate one of those machines unless you had a witness saying, "It is used." You see? So you'd have to play the machine, and get a pay-off, and of course if you're a deputy sheriff or a policeman or something like that, and play the machine, they don't give you any payoff. The machine doesn't work. You can play it and if the machine works, go and arrest the bartender, or the cigar clerk, or whoever the deuce it was, but the machines were not by law explicitly made contraband so that you could pick them up. You had to prove that the machine was used. This was very difficult.

Sherry: This lasted all the way down until about 1950, when the legislature finally equated slot machines, even parts of slot machines, with heroin and then there wasn't any problem. It took until that time to get that legislation through. That of course was part of the Howser scandal and all the rest of it, when people became aware of the fact that these organized criminal types were not to be tolerated.

MF: I'd imagine that that would have been a problem, because if you had to have use proved, you really couldn't get to the guys who were supplying --

Sherry: No. No. There wasn't anything -- . No.

MF: All you got were the little guys, running their little stores.

Sherry: Yes. Well, that's what the Mills thing was.

Now, Mills were the big distributors in this area. They had very few machines in Alameda County.

Our big problem was Emeryville, which was our one wide-open kind of an area, but the sheriff actually policed Emeryville. They had Chinese lotteries down there. That was a very terrible thing they had there in those days. The terrible thing about it was, the doggone city council was getting more money from these lottery operators than they were getting by way of their \$5 per council meeting, so it was a lucrative job being councilman. It was all pretty bad. The sheriff would go over and raid the lotteries at regular intervals, and knock them down, just to keep the thing under control.

Mills kept pushing the things, and we knew they had that big warehouse down in Oakland, which was kind of a distribution point for slot machines that they were distributing in the area. Slot machines were not too common in San Francisco. Places like the Press Club for example, or the Olympic Club or something like that would have slot machines. There were not too many of them on the streets. They kept them down pretty well.

San Mateo county was pretty wide open. There was a dog track running down there too. There were Chinese

Sherry: lotteries and all kinds of organized criminal activities going on, chiefly in that area. Mills had this warehouse in Oakland that the office got wind of, and the strategy figured out. On this Earl Warren, of course, was one of the strategy makers, you know, "How do we cope with this darn thing? The law is not good on the doggone issue." So they developed this theory that these machines were confiscatable because their only legitimate use was gambling.

They went down -- I don't know whether they had a search warrant; it must have been a search warrant kind of an operation -- and said, "We're going to move out a whole doggone warehouse of the machines." They then sought to get a civil action confiscating the machines for their destruction.

That resulted in a civil action in the Superior Court. Mills Novelty was represented by Monroe Friedman. He's a retired judge now. He represented Mills Novelty Company. He was a very gentlemanly kind of lawyer. We were in a civil action. But the office made it stick.

Now, I was not actually involved in that, as I was not on the civil side of the office. Jim Oakley, the late Judge Oakley -- whom you've talked to I think -- was in charge of that litigation. So that's that case. It was simply the use of the civil process to seize these machines and confiscate them.

But after that, in '34, '35, and '36, '37, around in there, we had a big outbreak of lotteries. There had always been lotteries among the trade unions and the craft unions, and I suspect they still have them now. This is the way they took care of some of their retired members, not having retirement systems. They'd give retired members the lottery thing, going around from print shop to print shop picking up the bets, you see, and then delivering on the winning numbers and that sort of business. Nobody was very disturbed about that because it was confined to these small groups and wasn't a generally public kind of a thing.

But a lot of guys, all of a sudden, got into the business of running all kinds of lotteries. I remember the Roosevelt lottery; the lottery tickets were floating

Sherry: around all over town. Pay a dollar, and maybe you'd win something, or you wouldn't. You'd never know. They'd collect the money and then come around and pay out some prizes.

At least the bookbinder's lottery -- which was the one that the pressmen had, it was called the bookbinders -- had a public drawing. They shook dice to pick out each number. Shake a dice box and read out the number, and then shake another until you get five numbers, you see. But it was all done publicly.

Nobody knew who these other outfits were or where they were. There were just salesmen around selling tickets. There were a number of them. One in San Francisco, a very, very large one over there, would have a capital prize of something like \$40,000 each month they said they had. I don't know of anybody who ever won it.

We began a campaign against those. You asked earlier about search warrants. This is where we had to use search warrants. We'd find out where they were operating, and we would try to hit them as close to the drawings as we possibly could, when they had all of their equipment on hand. Bob Hunter and I -- he was head of the civil department then; I representing the criminal department -- had a two-man operation, with inspectors and police nets and everything. We had eight or nine or ten of these raids knocking off these lotteries.

That's where I learned about search warrants, because that's what we used in those days. You had to, you know. If you know that someone is in a house or in a place and you have probable cause to make the arrest, you can break in and make the arrest and then make a search, incident to this lawful arrest. But if you're going to break into some place or raid some place and you don't know whether anybody's going to be in there or not, then you just can't operate that way. So that's where you do need the search warrant.

I suppose we used search warrants more than any other office that I know of, and it was just because of that particular situation. Once it was under control, then the need for it disappeared.

MF: Was Warren able to deal with the dog track races?

Sherry: Yes. The moment he became attorney general. You see, it was Contra Costa county. The moment he became attorney general, the very first day that Warren Olney was on the job, he visited Black Jack Jerome and said, "The Rancho is to be closed down at once and the dog track also."

Warren Olney can tell you about that story. He can tell it better than I because he was there.

MF: That's a good question to ask him.

Sherry: Yes. He knows that one. Warren Olney started practicing in the district attorney's office in Contra Costa County in Martinez before he came to Earl Warren's office, so he knew Black Jack Jerome. He knew about that whole darned situation, and he personally closed that darned thing down. I don't recall the details of the closedown in San Francisco, where the dog track was, where the Bay Meadows horse race track is.

Labor Cases

MF: Your mentioning union lotteries reminded me that I wanted to ask about the General Strike of 1934. You said you were in the courthouse then in Oakland, during the time of the '34 strike?

Sherry: Yes. We had no trouble at that time that I can recall at all, on this side of the Bay. All the uproar was over in San Francisco.

I was well aware of the situation, particularly insofar as it involved what later became the Seamen's Union, because it was only a year or two since I had been going to sea, and I knew a lot of these guys.

Because of the strike, all of the ships that came in immediately tied up and that was it. For the first time, all of the sailors are ashore, all together, on the beach. They didn't have anything else to do except sit around and form a union. They'd had the old Seamen's Union before, but it was a very ineffective kind of a thing. It was kind of a one man operation,

Sherry: because the merchant mariners are scattered all over the face of the earth, and no way of organizing at all.

This made a perfect situation, where the sailors could get organized. Their organization started from that. The ILWU of course was the big thing, and the prime mover was Harry Bridges. There were efforts to break the strike, largely by recruiting university young men, putting them on tugboats on this side of the bay and taking them over to the piers that used to stick out in the bay and then offloading on the piers from the water, keeping the front completely sealed off so that they could unload the vessels. Then every once in a while -- they had a lot of policemen down there -- they'd open the doors and the trucks would come in with the strike-breaking truck drivers, you see, and that produced all the battles and the violence that occurred.

On this side of the Bay, although the strike was quite effective -- for three days everything was pretty well shut down -- there were a number of designated service stations for example, that stayed open. And because we were public employees we could buy gasoline at those places or at the county garage. The county garage had a gas pump for our private cars so that we could keep mobile.

We were just kind of waiting for something to happen but nothing really did happen, one way or another. I think we could only buy ten gallons of gas at a time, something like that. I remember one afternoon on the third day of the strike, in Warren Olney's office, he wanted to go off some place for the weekend, and the gas that he had wasn't enough to get out of town. We figured that we could drive down later in the afternoon to San Jose, which wasn't closed down, and buy gasoline in cans and bring it back. We had the plan all cooked up and everything was all ready. But it was that afternoon the strike was broken, so we didn't have to. It was only about a three day shutdown.

There were a lot of crazy things done in those days. In my town of Piedmont, for example, in which I did not then live, they had men and boys at all of the entrances to the town and barricades across the street. They'd stop every automobile. They thought the ILWU was going to come in with goon squads and take over Piedmont.

Sherry: Gosh. Extraordinary, hysterical time. It all subsided quite quickly.

MF: Were there efforts made by officials over here to prevent goon squads or anything like that happening?

Sherry: Well, at that time, nothing really happened, you know. It was just a so-called general strike. They weren't any labor beefs, as they called them, over here at all, and there actually wasn't much maritime activity -- there wasn't much to the Port of Oakland. I think the Port of Oakland, as an entity, didn't exist. There was the Moore Shipyards and the Encinal terminals and a few places like that, but Oakland was not important as a seaport. So there was very, very little of that kind of thing.

The shutdown that did occur here was kind of a sympathy sort of thing. All the unions, the craft unions, everything else, stopped. They just shut down. The streetcars stopped running, service stations were closed, no more grocery store deliveries -- they all used to deliver in those days -- a lot of them were closed. A lot of the "Mom and Pop" outfits of course kept open. We didn't have supermarkets or, you know, Safeway. They were just beginning to come in at that time.

Everything was just quiet. Nothing much moved, nothing much happened. The kids went to school if they could get there, and that sort of thing. But outside of San Francisco I can't recall any trouble. San Francisco had some bad battles, you know, some people killed, some shooting, and that sort of thing. But that's about all that one can say about the general strike.

MF: And you said you weren't in Oakland at the time of the King, Ramsay, Conner case?

Sherry: I was in the Berkeley office at that time, so I knew about the case. I heard it talked about all of the time when I was down at the office and that sort of thing. But I had no part in the trial.

The interesting thing about that case -- this was the first time, I think, in this area, when that case occurred, which made a kind of cause célèbre. It involved what one might call the left wing of that day, and the left wing of that day were the labor

Sherry: unions. They've changed considerably.

This was the first time the courthouse was ever picketed, for example. Pickets around the courthouse, "Unfair Trial," "Railroading the Union Leaders." The same stuff you hear about Angela Davis. Just change the name and it's the same routine.

There were all kinds of personal attacks made on Earl Warren because of the prosecution, "frame-up" and all that kind of thing. One of the attacks was, "As usual, the district attorney is going to stay as far away from the court room as ever, you know, in trying this case."

Well, normally the district attorney is an administrative officer. He doesn't engage in trials himself personally. So Warren said, "Well, I guess I've got to go down there." So he did. He participated in that case. He and Wehr, and I guess Warren Olney tried the case; it was homicide.

MF: Olney was out of the office by then.

Sherry: He was?

MF: I think he'd just gone into private practice.

Sherry: He may have. But there was another lawyer. Leonard Meltzer.

MF: Yes. Meltzer helped try it, and I think Ralph Hoyt --

Sherry: Yes. Ralph worked on it too, about four or five of them. That's right. Ralph did work on that case. In any event Warren was there and made the closing argument and all that sort of thing, simply because they said he didn't dare.

It was like any other case. It was a big kind of a sensation and was in the newspapers every day as long as it lasted. There were all kinds of outside tensions arising out of the fact that the case was being tried, and threats of political reprisal and all that sort of business, which all of us in the office got at one point or another.

MF: Yes. I remember seeing pamphlets that accused Warren of using this case to advance himself to be attorney general.

Sherry: Oh yes. I don't think he even had the idea in the back of his head then that he was ever going to run for attorney general. And I think when he became attorney general, Warren saw himself as another U.S. Webb [former attorney general], being there for the rest of his career. As a matter of fact, his later candidacy for governor was sparked by Governor Olson himself when Earl Warren was attorney general.

The Point Lobos case, the Alberts murder, was important, because when Culbert Olson was elected governor, one of his promises was that he was going to commute the sentences of these guys, or grant them pardons or whatever the thing was.

He made a lot of big fat statements about how they'd been railroaded and all, as a part of the political campaign. Warren was then running for attorney general; he was not opposing Olson as such. Warren always ran his own campaigns. So he didn't say anything about it, but he was vastly irritated and angry about it, as he always was whenever he was accused of acting in bad faith one way or another.

That reminds me of a cute story about him that maybe nobody ever remembers. During one of the problems down there, when there were protests about actions by the office -- I think it was the pea-pickers' strike thing. You've run onto that?

MF: Oh yes. I wanted to ask you about that.

Sherry: The pea-pickers' strike operation -- there were a number of people who came down and protested to the board of supervisors about the way the sheriff's office and the district attorney's office was handling the thing.

One of the protesters was a clergyman from one of the churches -- I think it's the one up about 22nd and Broadway, a different congregation at that time. I don't remember. At any event, the clergyman came down and made a lot of wild accusations about Earl Warren to the board of supervisors in advancement of his cause. It so happened that Warren's children went to the Sunday school in that church, and one of the distinguished elders of the church called him up and said he'd read about this in the newspaper and said he was very disturbed about it and hoped that Earl

Sherry: wouldn't take his children out of the Sunday school because of this instance. Earl replied, "Oh no, I wouldn't do that. If I took them out of the Sunday school, I'd have to tell them why. And if I told them why, I would have to tell them that their preacher was a liar. And I don't think that would be good for their religious education." [Laughter] The man has a wit that shows through at times.

MF: Could we pursue the pea-pickers' strike for a moment, because that is something that we have been wondering about in the office. Someone else is interviewing Dr. Paul Taylor --

Sherry: All right, now. This is in the days when labor is just trying to get organized, when there is no National Labor Relations Board Act, when we're pretty much the way that England is now. Craft unions were pretty solidly organized, particularly in San Francisco, but beyond that there wasn't much of anything. There was no Longshore Union -- terrible abuses there -- and of course no agricultural unions at all.

But we did have during those days, a real genuine, honest-to-God Communist party, out as such, and hammer and sickle, preaching revolution, and all that sort of thing. We had them on campus. What was his name, that professor who got into trouble here? He got in trouble because he was a Communist. He was a member of the faculty, a real card-carrying Communist.

Well, the Communists were doing the things that people say are being done now, but you have to look around. You can't find them any more. Southern Alameda county now, which is wall-to-wall suburb thing, had enormous truck gardens, starting from about Irvington on south, of all kinds of vegetable produce. Each year they had a pea crop. It was one of the big crops. When the pea crop came in, a lot of migrant workers would come in, you know, from all around, just as they do now, and would work at picking the peas. It was in the years of the depression, times were rough, and agricultural labor was not properly paid, it was poorly organized -- it wasn't organized at all -- and very badly treated.

The communist groups, and others as well, had made

Sherry: some kind of an effort to organize to improve the conditions, kind of pre- [Caesar] Chavez sort of a thing, but a very diffuse sort of a business. They had none of the sophistication of these people now.

In those days, picketing was illegal. It had not yet been equated with free speech you know, so picketing was per se illegal. It was illegal to block highways of course, and illegal to enter agricultural land. For the purpose of organizing these groups, of course, the organizers would go down to the fields, just as the Chavez people do, and they'd march into the fields or they'd block the highway and they had meetings and that kind of business, or they would picket.

The owners and the farmers would scream and the sheriff would go down and break them up or make arrests. Well, I never talked to Warren or heard him say anything about that, but he evolved his own strategy of taking care of it by breaking up the gatherings when they occurred, that sort of thing, but then not arresting or charging anybody. He just kept the situation fairly fluid, so there were no prosecutions that arose out of it at all.

But there were an awful lot of meetings that were broken up, and these people that would move into the fields to organize would be picked up by the sheriffs and taken over the county line and let out or something to that effect, something that nobody would even think of doing now. But at that time you wouldn't think of doing anything else. It was supposed to be a very humane way of coping with the problem.

That's about all. Bob Hunter set up his office -- I think he was stationed at Hayward. He advised and directed the deputy sheriffs who were handling that thing, and rode it out. That was the pea-pickers thing. I think that probably there were two years of that, two successive crops -- I'm not sure.

MF: Yes. I remember there was some violence and arrests in other counties.

Sherry: Oh yes. Sure. My heavens, that happened. When the Ckies came up through the Valley, that was another time when there was a great deal of social clash and arrests and violence and the rest of it.

We didn't have much. This was one of Warren's

Sherry: ideas: avoid confrontations, avoid these kinds of showdowns if at all possible. But if you're confronted with something, you have to act, why go to it.

MF: Is that why in that Berkeley case you were telling me about last time that he asked you to tell the chief of police to stop arresting pickets at Woolworth's?

Sherry: Yes. Yes. It's a frustrating kind of a thing. We have a repetition of that problem around here now, around Berkeley. How do you control the mob in that kind of thing? Well, there are techniques that one can use, but some of the techniques, and some of the techniques that were used here, just aggravate the situation. You know, if policemen just disappeared in a number of circumstances around here, the crowd would also. There were other times when the police were very, very necessary indeed.

I guess it was that so-called Third World business about four years ago or so -- I can't keep the dates firmly in mind -- when they were running around trying to break up classes -- a number of windows broken from the outside and that kind of thing. They finally put the highway patrolmen inside the building, inside the door. Then nobody came in. Everything was fine. Just that change in technique, from patrolling Sproul Hall Plaza. They couldn't do any harm down there. There wasn't any point in trying to break up things down there. Meet, sing, yell, shout. But then, when they went off in the middle of the campus and started breaking things up, that was bad.

Warren was very conscious of that sort of thing. These are not things that you can just resist with force, with the heavy hand of the law.

MF: Did you know much about the San Jose lynching?

Sherry: Well, all I know is what I read in the newspapers. That wasn't in this county.

MF: Well, part of that case was in this county, wasn't it? Didn't the murder occur in this county, the murder of Brooke Hart himself?

Sherry: No. Well, the body was thrown off the Hayward-San

- Sherry: Mateo bridge, or the Dumbarton -- I don't know which one now, I don't remember -- maybe the Hayward-San Mateo Bridge wasn't built then. It was one of those bridges the body was thrown off of. The trial was in -- or it was scheduled to be, before the lynching occurred -- it was scheduled to be in Santa Clara. The men were siezed and taken out of the Santa Clara County Jail, and hanged in St. James Park right across from the jail, lynched right there. No, that was a Santa Clara County case.
- Fry: I noticed in that the governor came out quite strongly in favor of the lynchings.
- Sherry: Rolph. Yes. He used to wear Western boots all the time, too, the Western tradition.
- MF: Yes, he said that he was considering releasing kidnappers from San Quentin so that goodhearted citizens who knew how to deal with such nefarious criminals could mete out the same kind of justice to them too.
- Sherry: But that -- we had nothing whatever to do with that Brooke Hart thing. That was the next-door county.

Communist Activity and Criminal Syndicalism

- Sherry: [Referring to interview outline.] Now, communist activity and criminal syndicalism. Well, the Anita Whitney case, which was a terrible thing, was tried before Earl Warren became district attorney. We had nothing to do with that.

As I said, in those days, in 1930 to about 1934, there was a lot of communist activity around here. Communist candidates for mayor -- I can remember there was a man named Darcy for example, I met here on campus, my first real communist, you know. We were going over to see a Russian motion picture in a theater in San Francisco, and so about four or five of us, law school guys, and Darcy, whom we met, went across on the ferry boat, and he was talking all the time about the new socialist world and that kind of business.

Sherry: We saw this frightful motion picture, which showed a war between very, very thinly disguised German Nazi types and the noble Russians, and tanks charging about, and big battles -- done by just a relatively few numbers of actors. At the end they played the Internationale, the first time I saw people, you know, give the clenched fist salute.

They really believed it, and they really worked on it in those days, except that they weren't violent. They were pretty mild. They were very definitely committed to working against but within the system, so to speak. When Olson was elected governor, the next day in the county welfare department, every county welfare worker had a copy of the People's World on his desk, together with a request for subscriptions. Oh there were lots of good fights about --

Fry: Who put it there?

Sherry: The communists, because Olson now was going to change things, and this sort of thing. They had a lot of communists infiltrated into that outfit, and they had that thing going on. A lot of the employees came down to the board of supervisors and complained that they didn't want to subscribe to the People's World, you know, that sort of thing. This disclosed it and that was all over.

Fry: That ended that, I guess.

Sherry: I don't think Earl Warren ever had a prosecution under the criminal syndicalism law that I can think of. Anita Whitney was the last one.

MF: I guess that was much more strongly enforced in the 'teens.

Sherry: Oh yes. Well that -- oh, that came out of the IWW movement. This was a statutory endeavor to take care of the IWW thing, which, was '15, '16, up to about the end of the war, with a little bit into the twenties. But we never had that that I know of, except the Whitney case.

[Refers to interview outline.] Nazi activity -- prewar, was very minimal. Very small. One night I remember a couple of us together with a member of the bar in Oakland who was interested in what they were

Sherry: doing, went to a meeting in a hall right near where the courthouse is now. One of these Bund meetings I guess they called it. There were about maybe seventy-five or eighty people in the hall. These young guys went around wearing their Nazi uniforms and all that sort of thing, and "Heil Hitler!" all over the place. Absolute stupid boring kind of a speech, and people disappeared. That was that movement. It was of no consequence.

Japanese Exclusion

Sherry: And Japanese espionage. There never was, that I ever heard of.

MF: Were you in the office when --

Sherry: The exclusion? Yes. That was a big shock and a surprise to most of us that that occurred. It happened in '42, the first part of 1942, and I left the office in mid-1942 to become a soldier.

They had a corner office, the southwest corner in the district attorney's office, and I could look down where -- the building is still there I think; it's a state building of some kind right across the street on the corner. It was then used by the state, and this was the assembly center for the Japanese. You'd go down there in the morning and see the Army trucks lined up and these long lines of Japanese patiently waiting to get on the trucks and be trundled away.

But most of my feeling, and the feeling of anyone, everyone, that I had any contract at all with was a feeling of outrage. My heavens, these were our friends and neighbors and, you know -- it was just awful. Oh, there were some frightful things. There was a Japanese family down in the Hayward area, or the Decoto area, in that part of the county, a three-generation Japanese family, all, I think, graduates of this university --

Fry: Who had a nursery?

Sherry: Yes. And a big one. I don't recall the name. But

Sherry: when they took the two men, the representatives of that family, in exile, there was, oh, a strong resentment down in that area.

I certainly did not ever at any time experience or even hear what I now am told was this anti-Japanese hysteria kind of thing around here. It just didn't occur at all. Everyone thought General DeWitt, by God, is not going to let what happened in Honolulu happen here, no matter what. Of course nothing happened in Honolulu either, but we didn't know it then. There was no way of knowing anything. Honolulu had far more Japanese, proportionately, than we did, in their population down there. That was a perfectly loyal population. There was no trouble at all. This should never have happened.

MF: But there were so few people who could speak out against it at that time.

Sherry: Well, you didn't know. You see, you never knew. Maybe there was -- . What did happen at Pearl Harbor? We didn't know what happened at Pearl Harbor for months.

MF: Yes, and there were so many stories of sabotage -- which never happened.

Sherry: Yes. When you don't know, why the stories flourish and people get excited and these things are done. You know, from the way you look at it -- well, I heard Earl responding here recently to "How could you ever have done that?" He said, "Well, that's just the way it looked to us at that time."

He pointed for example to the shelling of the oil station down at Goleta, when the Japanese submarine surfaced and began lobbing shells. Well, we were such innocent people at that time, everybody came for miles around to watch it. You see? Automobiles lined up and people standing watching this going on. Somebody calls the sheriff's office, and the sheriff's car came out there. What could he do? The sub finally ran out of ammunition and went under the water and disappeared. It did practically no harm at all. Small shells, and a drilling rig is a poor target. All kinds of alarm all over the rest of the country, but nobody who was there was alarmed at all. They thought, "This is exciting!"

Sherry: Then there were two tankers, two or three tankers which were crippled, too, beached themselves right out the Golden Gate, within the first three or four days of the war. That really was a serious thing. This was real damage, you know, when you see a ship sinking and piled up on the beach, then by gosh this is war.

Fry: You mean U.S. tankers?

Sherry: Yes. Sure. The remains of one of them, I think, is still visible out there. It was a Union Oil tanker I think. I don't know what the other one was. There were three or four, maybe five ships that were attacked. Not all were sunk.

In any event, Warren got in touch with the -- whoever was in charge of defenses of the West Coast and he was appalled to hear that the military services had one airplane serviceable in the whole area, and no fleet. There was nothing. The fleet was in Pearl Harbor. There wasn't much left of it, except, thank heavens, for that air carrier task force which happened to be at sea at that time, which of course was the most important part of the whole business.

We were just militarily completely defenseless. There was no question about that at all. But at the same time the Japanese were simply without any kind of resources at all to do anything except this pipsqueak sort of submarine, minor submarine attacks. But after what had happened at Pearl Harbor -- that seemed incredible. I just couldn't believe that, when I heard that was going on.

There was a tremendous amount of alarm, and people just weren't thinking rationally, that's all.

Fry: I guess there was an enormous amount of pressure from the Army too.

Sherry: Well, DeWitt was given the command, and Husband E. Kimmel of course had been grossly derelict in Honolulu, and DeWitt reacted to that.

If you read about the first two pages of the Stilwell papers, Stilwell was at Carmel at that time and got his orders to, I think, go over to China. He has a paragraph in there which talks about "that fool DeWitt" seeing ghosts everywhere. Stilwell was a much more realistic man.

Sherry: DeWitt really ran the doggone state, you know. He established his own liquor-selling hours and all of this kind of thing. And a man in uniform couldn't be served a drink or buy any liquor until 6:00 in the evening, I think that was the deadline, or something.

I remember I came back after V.E. day in Europe, came home. I was destined to go back to the Atlantic division, the Air Transport Command. But I was home, and it was great to be home, you know, and in the drug store at the corner, and renewed acquaintance and said, "I want a couple of bottles of -- ." The druggist just looked at me and said, "You send your wife down. I can't sell it to you." I thought that was -- oh! outrageous, you know. Gosh. So I said something like, "I thought I was old enough," and he said, "You know General DeWitt." At that time I did.

But that's kind of getting away from Earl Warren.

III EVALUATION OF THE DISTRICT ATTORNEY'S OFFICE

Earl Warren as District Attorney

MF: Getting back to Earl Warren, then, I'd like to ask you for a quick evaluation of his years as district attorney.

Sherry: Well, I think we can do that rather briefly. Earl Warren was a great district attorney, a great governor, a great chief justice. He was just an unusual kind of man in whatever role that he played. He was also, I thought, a very fine attorney general, although he had only four years in office there.

That reminds me of the problem about Olson. When Warren became attorney general, he was a Republican of course and Olson was the first Democrat in a million years. Warren's idea was, well, we've had a campaign and we've had these problems and troubles and Olson's made all these crazy statements about King, Conner, Ramsay you know and all that kind of thing, but he said, "I'm attorney general and I'll serve him, the governor; I am his lawyer and I will be it."

He traveled to Sacramento and talked to Olson and said, "Apart from any kind of political differences, you're entitled to all of my services, all that I can do," and all that kind of thing. Well, fine. He's prepared to go ahead on that basis.

Within a very short time Warren had appointments to make of course, his exempt, non-civil service guys to appoint in the office. Governor Olson telephoned him, as I recall, and told him that he would like to know who the attorney general was intending to appoint. Warren said, "What's it to you?" He said, well he thought that he ought to have something to say about the people that would be appointed to the office. Earl

Sherry: Warren replied, "Not while I'm attorney general." That was that one. That cut that.

Then he had further difficulties with Olson. There was another thing. I don't recall what it was. Finally Warren said, "Nobody's going to do anything about this man unless I run against him. I'd better do it." So his intention, his idea of running for governor was something that did not arise until he had been in the attorney general's office and had come into some kind of conflict with Olson.

Olson, incidentally, attended a meeting of organized labor in Fresno I think it was, I think during the summer of his first term, first year in office and said that he had read the entire transcript of the King, Conner, Ramsay case and he said that they had had a fair trial in his judgment and were fairly convicted, and that he was having serious problems about whether or not he would commute their sentences, which speaks a great deal for Olson's honesty. Then he did. He had to keep his word. He promised that he would and he did, and this of course angered Earl also when that occurred. If they were fairly tried and justly convicted, how can Olson justify turning them loose?

Earl Warren's greatest talent was in his independence which he preserved in selecting personnel, his ability to get good personnel, his extraordinary ability to command loyalty from people. When he was governor up there, he brought Karl Holton who was probation officer in Los Angeles County, and put him in charge of the new Youth Authority, and said, "Karl, stay here a couple of years and get this set up." Karl was there for seventeen years. He never could get back. Jim Oakley stayed in that office far longer than is reasonable, [laughter] taking his circumstances into account.

Another thing -- he was able to command that loyalty, but another problem with Earl was that if a man was doing a good job, if there were no complaints from this section of the operation, he just didn't pay any attention to it. "Why? It's going well." We always had in the office the problem of movement. You know, people like to advance, not so much in the matter of pay, that wasn't so much, but to move from junior

Sherry: trial staff to senior trial staff, to get out of the prosecuting attorney's office down to the main office and that kind of thing. A lot of people became quite resentful and unhappy in their jobs -- not a lot, some -- because they were doing such fine jobs where they were, "Why move them?" Earl was just not sensitive to that.

Now at the same time, he took very good care of his employees. There were all kinds of problems in those days, the kinds of problems that government is now faced with, with shortage of funds, in depression time. The taxpayers' association was having a big hassle with the board of supervisors asking the supervisors for a ten percent pay cut on all county employees. Did you hear this story?

MF: No.

Sherry: Earl Warren went down there to attend the meeting. He was advising the board of supervisors, and the taxpayers lobbyist was making the "times were tough" argument and all that kind of thing. Earl said, "Well that's fine. You know, it's tough for all of us, isn't it now?" "Oh yes it is. These are hard times." And all that sort of thing. Earl said, "Well, I'll tell you what. I'll agree to this proposition immediately just as soon as you reduce payments on my house loan by ten percent; as soon as you take ten percent off my account at Capwell's -- " "Well," he said, "Don't pick on us, pick on everybody." The kind of inverse discrimination that some of us around here now are suffering, he would not stand still for that one moment.

Then they wanted to cut back on travel expense. "Why do these guys have to stay at the first-rate hotels," and all that sort of thing. Earl just said, "When one of my deputies goes out representing Alameda County, he goes first-class, just as good as the lawyer he's trying the case against." He was very good that way. But on day-by-day personnel matters, not too sensitive.

He was not only good as a district attorney, but I think his particular genius was in evoking loyalty and his ability to infuse other people with his own kinds of ideal, his own kinds of modes of operation. I can't think of anybody who has ever been exposed to Earl Warren who hasn't to some degree been changed

Sherry: or influenced by him. It was inevitable.

Politically he was very, very strongly in the tradition of the Hiram Johnson progressive Republicans, very influential, certainly in my political thinking, because of that, basically.

Now Ralph Hoyt was really his personnel man. Ralph was the chief assistant, and Ralph was much more sensitive to personnel problems when people were having difficulties, everything from family problems to being in debt or what not. Ralph was on hand, and you'd go talk to him about the problems. One of the first things Ralph did when he became district attorney was to pull out the salary ordinance, and go over the whole business and upgrade -- within a year or two's time he had upgraded the whole salary scale level of the office. Very very good indeed.

The Office Under Ralph Hoyt

Sherry: Ralph was a milder mannered guy than Earl. Not quite as imaginative, but very, very hardworking, a man of the highest integrity. But he didn't have the outgoing personality that goes with that job. The first time he had to run for district attorney he was just acutely embarrassed the whole time. He just hated to go to picnics or to go to Elks' clubs or Rotary or things like that. He was a very shy man, definitely. He had an awful time. But he changed, he improved, he learned how. He didn't drink even, but he developed a fine taste for Scotch, drank it the rest of his life.

He was a gentle man. In operation of the office, he was a little too rigid. I think he felt a little uncertain. Earl Warren's a hard act to follow. Ralph tended not to delegate enough authority. He wanted to see everything that was going on. Well, it got to the point where there were times when we just had to keep Ralph from knowing what was going on.

By that time I was in charge of the criminal division, Bob Hunter had the civil division in the office. Folger Emerson was calendar man. He ran

Sherry: the court calendar of cases. We had problems with Ralph.

For example, he'd get all upset when he'd read something in the newspaper about an episode where somebody was charged with battery but somebody had been cut with a knife. Ralph said, "When anyone is cut with a knife, that's assault with a deadly weapon and you will charge assault with a deadly weapon!" You know, get them down to the Superior Court. Well, so all right. The calendar builds up with this backlog of west and east Oakland barroom brawl cases where somebody got cut with a knife, even if nothing serious particularly happened at all. One of the judges finally summoned me down to the office and said, "You will stop making my court a police court!"

I got together with Folger and we let the people know out in the outlying offices to go back to the old policy. We didn't tell Ralph a darned thing about it. [Laughter] He didn't know, until it had been going on for four or five months, and we asked him, "Do you notice anything different lately?" [Laughter]

Fry: Now why couldn't something like that have happened under Earl Warren? Could a decision have been made underneath Earl Warren and he wouldn't have known? Why?

Sherry: No. No. Well, Ralph's decision was wrong here, you see. Warren didn't make any wrong ones. That's one of the great reasons -- mainly he didn't. His mode of operation, administratively -- everything was all right. He wouldn't be arbitrary the way Ralph was, in any case, you know. Warren didn't operate that way.

Fry: Warren never looked at it just in the legalistic fashion? He was able to incorporate the needs of the court calendar, and everything else?

Sherry: He was sensible. He said, "We've got our business, and the judges have their business. They don't tell us and we don't tell them."

For example, during his time, we never did a darned thing about sentencing. We never recommended for or against probation. It was a flat rule of his. Once the case is done, the plea of guilty is in, or the conviction, the verdict of guilty is in, you just go and start in on the file of the next case. You're all through with that case. What happens thereafter is the

Sherry: judges' responsibility, not yours. He let it stay right there, and it worked too. It was fine. But then, this was before the days when plea bargaining developed as it has since, so you no longer can operate in that kind of context. The volume of cases is too high.

But Ralph would be a little nervous about something, and he'd lay down one of these great big rigid rules that you couldn't live with, and we knew that as soon as we could demonstrate to him that it would work all right, although the rule wasn't being followed, he didn't mind. He figured that we'd keep him out of trouble. That was the difference.

MF: You mentioned last week that you were involved under Ralph Hoyt in developing a personnel recruitment program? What was that?

Sherry: Well, Ralph Hoyt was interested in personnel, and shortly after he became district attorney, a man named Phil Berger was appointed personnel officer for Alameda County. It was the first personnel officer they ever had, working with the Civil Service Commission.

Shortly after he was appointed, he came up to the office. He had to start right in from the very beginning and draw job specifications for every job in the county; salary structure, and get an idea of duties and responsibilities and that kind of thing. It was my introduction to that kind of personnel management actually, from Phil Berger. I worked with him. I was head of criminal section, and I learned all about the strange and mysterious operations of personnel people from him. I did, I guess, almost all of the job specifications for the office in those days with Berger, in consultation with Ralph, ideally where we should set the pay levels, and that kind of thing.

That's something he was interested in, whereas Earl Warren wasn't. Earl Warren -- the shop operates automatically! [Laughter]

Fry: How did the people in the office feel about working such long hours under Warren?

Sherry: Oh, they were used to it. That was no problem. Saturday was only a half holiday in those days. We

Sherry: had the office meetings on Saturday morning.

You didn't always work long hours. It depended on what you were doing. There were some times when you worked ordinary kinds of working hours. But when you had a crash case or a big investigation or something, you just dropped everything and went with it. That's all.

Fry: I see. It doesn't sound too different from today.

Sherry: No. No, it's not. It's no different from today. They're working down there just as hard now as then, and probably with the rush, they have to do it much more hurriedly than we had to do it. We could stop and think and do some legal research, but they have no time for that any more.

The Office Under J. Frank Coakley

MF: Could you say anything about the office under Coakley?

Sherry: I was instrumental in getting Frank to come into the office when Ralph was appointed to the superior court bench. It was a great problem. Frank had gone into private practice after the war, with his brother Tom and Bob Litler in San Francisco. They had a general practice, and a labor specialty, and that kind of thing. Frank was doing very well, and having the time of his life. Ralph's departure came up and who's going to become district attorney? Coakley was the natural for the job, because he'd been in the office before and he was very, very well known, and had an enormous constituency in the county. People knew the Coakley family and liked him.

But Frank was very reluctant to come over and take the office over. I remember I went up to his house one night, walked in about 8:00 in the evening or so after dinner, and we worked steadily with the problem all night long until Kitty came down in the morning and said, "Do you fellows want breakfast now?"

Frank said, "Yes, I'll do it." So he became district attorney. Now Frank, as a person, was very, very important to the office at that time. The

Sherry: office has always been under all kinds of political pressures and political attack from people, on one side or another. A lot of people have been envious of the position, and would like to be district attorney and there are a lot of people who would like to have their own kind of district attorney in there instead of the kind that they have had. But there was this enormous feeling in the office that "We've got to keep going in the old tradition," and Coakley was the man who could do that.

Frank however, in all of his experience, was a trial lawyer. He never managed people, he knew nothing about personnel management, direction, or any of that kind of thing at all, and so he was just not a good administrator. He wasn't a good administrator at all.

It didn't make any difference when I came back after the war and he became district attorney. I guess I was with him another year and a half or two years before I left the office. Folger Emerson and I ran it with the utmost freedom. I kept Frank informed as to what was going on, but he let me run the show. So there weren't any problems that way at all.

But later when the office grew under Frank, and lots of the personnel began getting out of the office, getting into private practice and all kinds of opportunities on the outside, he suddenly woke up and found himself with an office that he'd never contemplated having before, a bunch of youngsters with no experience. There were some bad administrative problems down there. He was just not a good administrator at all, in my judgment. I tell him so. I have told him so.

MF: What sort of problems? Just to get a couple of examples.

Sherry: Well, he was very unsure about trusting somebody. Instead of dealing through his normal chain of command he'd go and talk to somebody underneath him, a subordinate. Or he would pick out somebody out of the office and give him a problem without any by-your-leave from the guy who's the fellow's ordinary supervisor. Jumping the chain of command, the chain of administrative direction. He was doing that to the point where people were very unhappy about the whole

Sherry: thing.

MF: Did that improve some as he got more experience?

Sherry: Well. I guess it improved some. I think it probably improved a great deal more under Lowell Jensen, but I don't know. [Laughter] But that was a problem, there's no question about it.

IV THE SPECIAL CRIME STUDY COMMISSION ON ORGANIZED CRIME
[Interview III, June 22, 1973. Interviewed by Amelia Fry.]

Origins of the Commission

Fry: When were you on the crime commission? I couldn't find your name anywhere on this final report.*

Sherry: I was on the original staff as assistant counsel from mid-1949 to the early fall of 1950. I wrote most of the final report dated November 15, 1950. Then I went back to the district attorney's office in Alameda County until January, 1951. This report marked the conclusion of its work. There was another commission set up with Warren Olney heading it again thereafter, which operated in 1951 and 1952, but by that time the attorney general's office had been reformed; [Frederick Napoleon] Howser was gone, and it didn't do much. There wasn't much to report anymore. They had very little activity and just filed a formal report. There was a little bit of bookmaking activity, I think, in San Mateo County, but that was all there was to talk about.

Fry: Were you in on the formation of the first commission?

Sherry: No, I was not. I first heard of it in the newspapers, a big headline announcing Admiral Standley as the chairman and that kind of thing. That had to be in 1947, I should think.

Fry: It actually came about in the statutes on November 1, 1947.

*This interview is based on Final Report of the Special Crime Study Commission on Organized Crime, state of California, Sacramento, November 15, 1950.

Sherry: Yes, and the first report was March, 1948. It was created by virtue of an executive order, November 1, 1947. There is a penal code section that authorizes the appointment of crime study commissions.*

Fry: Mr. McGee told me it was worked in under the Department of Corrections.

Sherry: Yes, that's because the law which permits the governor to appoint these various kinds of commissions is in the Penal Code, and it sets out what the commissions can do. It's a very broad direction to investigate almost anything that has to do with the cause and prevention of crime, a very, very broad commission.

In 1947 the Study Commission on Organized Crime was one of five commissions that were appointed, others in other areas of the criminal law. But this one was restricted, or rather its main target was organized crime, which was then manifesting itself in California, the Mickey Cohen and Dragna gangs in Southern California particularly.

It was also known that there was a good deal of variation from county to county in this state with respect to the level with which the criminal law was enforced. The system just wasn't working properly. There was a constitutional amendment passed in 1934 which established the attorney general as the chief law officer of the state and which gave him supervisory power over the various county law enforcement officers, particularly the district attorneys and the sheriffs. For some reason the chiefs of police were left out.

Earl Warren became attorney general in 1938 with

*Penal Code Section 6028.3.

Sherry: that authority. He began very vigorously as attorney general trying to break down these variations that were occurring in the counties. Contra Costa County in this area, particularly, was just about wide open. There was a big dog track running right out the other side of El Cerrito. Blackjack Jerome was the operator of that. He had the Rancho San Pablo, which was just like a Nevada gambling house, running full blast. It was on San Pablo Avenue in the unincorporated area of Contra Costa County, and of course it was under the sheriff's protection.

In any event, as soon as Earl Warren became attorney general he stopped that. He sent Warren Olney personally to see Blackjack Jerome to tell him "it stops right now." And it did. They burned up all the gambling equipment taken out of the Rancho San Pablo.

They stopped the dog racing, which was also going on in San Mateo County. They set up "Earl Warren's fleet," which went down and knocked over Tony Stralla's gambling boats in Santa Monica Bay. These grosser aspects of the situation were easy enough to attack by any kind of a determined person and certainly Warren was, in that situation, and he had lots of support.

But when he went to the governor's office, the war years intervened. [Robert] Kenny was attorney general. There wasn't much doing during that time. Kenny was a good attorney general. The war years were years when the rackets and other kinds of extracurricular activity operated only in a rather small way. It's kind of unpatriotic to go out and gamble great sums of money in time of war and that sort of thing, and of course a large proportion of the young men who are attracted to the rackets were in uniform and away.

Fry: I wonder if the gamblers themselves were in uniform.

Sherry: No doubt. In any event the difficulty occurred after the war, when things began to revert to the way that they had been before. There began to be increasing difficulty in policing the situation. Kenny made the mistake of running against Warren for governor. He campaigned by traveling to Europe, and of course he didn't come close to winning. Warren was elected in

Sherry: the primary. That put Frederick Napoleon Howser, former Los Angeles district attorney in office as attorney general.

Apart from Howser, what the future had in store with respect to Warren's administration was gang warfare which was becoming prevalent in Los Angeles. It had been evident while Howser was district attorney there, in point of fact, when he was in private practice before he became district attorney, he had represented some of the gamblers who were identified with organized crime in Southern California. Consequently, a lot of law enforcement people were very wary, and suspicious of him when he became a candidate for attorney general.

Fry: I know that attorneys are not supposed to bear any guilt of their clients, and yet when attorneys do consistently take members of the underworld as their clients, does this put them in a suspect position?

Sherry: Of course it does. It's all right for a lawyer to defend a client, that's something else again, but to become associated with him as his more-or-less partner in crime is inexcusable. There's no excuse for that at all.

Howser, and other lawyers, were not only defending these people in court. They rarely got to court, actually. They didn't try very many cases. They were more engaged in protecting them than they were in defending them. So there was no real attorney-client relationship.

Howser, for example, consistently refused to do anything with respect to the gambling fleet off the borders of his county there. He made a number of excuses, that the law did not permit him to do it, and that kind of thing. To demonstrate how wrong he was, Earl Warren went down and did it himself. He stopped the water taxis that went out to the ships, on the ground that they were operating out of California for an illegal purpose. That was sustained in the courts. Howser was not anxious to curb any of that at all. So, when Howser became attorney general there was reason to fear. That, plus the existence of organized crime itself, led the governor to appoint the commission, with Admiral Standley as its chairman.

Sherry: The people on the commission: William Jeffers, who is a very distinguished industrialist, as I recall; General Joyce was a retired regular army general; Harvey Mudd was a financier; Gerald Hagar was a very distinguished lawyer of Oakland.

Fry: Why was Harvey Mudd on that, do you think?

Sherry: He was just a citizen representative, a friend of the governor, who was interested in good government.

Fry: He was a civic-minded sort of person?

Sherry: Yes, that's the idea. I think Harvey Mudd College was named for him because of his interest in education and civic enterprise generally.

The commission was not organized as a crime commission. It was called the Crime Study Commission. It was supposed to study the situation and then to make reports. Law enforcement agencies were invited to cooperate with it. It started out on that tack. Warren Olney had as his chief assistant at that time the chief investigator who remained with him all throughout the life of the commission, Harold G. Robinson, former distinguished member of the FBI.

They started in early in 1948. They had an office on Sansome and California Streets in San Francisco. Very shortly after, Warren Olney began picking up all kinds of rumors and information about the attorney general's office being in collusion with some of the gambling operations which were going on in various parts of the state, particularly Riverside County, Kern County, and Los Angeles County. Not too much had developed at that time in the San Francisco area. I think San Mateo was the first place where there was evidence of infiltration. Chinese gamblers, who were operating rather freely there -- their operations were winked at by the local authorities -- began complaining that the attorney general was trying to scoop something off the top of what they were making. In other words he was extorting money from them through his people.

The commission, instead of a study commission, found itself an operational body receiving all kinds of complaints and information about organized criminal activity. Warren Olney had the governor invite the

Sherry: attorney general to meet with the governor and Warren Olney in Sacramento sometime during the spring of 1948. They advised him at that time of what Warren and his staff had been finding out. Howser stated that he was glad to have the information, he was delighted, and appreciated the fact that it had been called to his attention. He would look into the matter right away.

Nothing happened. Newspapers began following the conduct of some of his special agents who were non-civil service appointees operating under a director whose name was Lentz, former chief of police of Long Beach. They noticed situations such as Isleton or Rio Vista, two of those river towns up here, where the attorney general's people came in and invaded a Chinese gambling hall in one of those communities, where the customers were Chinese, Mexican field hands, etc., a poor people's gambling club. They announced they were officers of the law, shut down the operation at once, and they departed. They also took all the money they found with them. The newspapers began saying, "We wonder where the money went." It appeared to be a robbery.

There were a number of incidents of that kind. We had one in Alameda County where, during a big conference that the governor had called in Sacramento of all the district attorneys of the state, sheriffs, and various law enforcement people, one of Howser's men purported to have arrested a man called Tiny Heller, a so-called "betting commissioner" in Oakland because he was taking bets on sporting events. This was tolerated; taking bets on boxing matches, football and baseball games was not regarded as bookmaking. That had been going on for a number of years, nobody apprehending or being aware of the fact that the bookmaking law prohibited not only off-track horse race betting, but also any kind of contest of athletic skill between humans as well as animals.

Fry: What was Frank Coakley doing in all of this?

Sherry: This occurred when Ralph Hoyt was district attorney. It just never occurred to anybody that Heller was doing anything illegal at all. And he was not being protected.

Fry: No one knew the statute?

Sherry: Nobody had read the statute that way. It had never, ever been enforced that way. Everybody assumed it was only off-track horse race betting that was illegal. As a matter of fact, the police used to make sure that Tiny was sticking to the other kind of gambling! He had a city license. He operated openly. His door was open. Anybody could walk in and out. He wasn't paying one cent of protection.

So, when he was knocked over by the Howser people, he immediately went to his friends, the police. He said, "Look, I've been doing this in Oakland. I've been contributing to the Red Cross and the Policeman's Fund and all these other things, and I never considered that I was breaking the law."

But before he was arrested, he had been subjected to about two or three weeks of extortionate demands to cut the Howser men in. They not only wanted a proportion of his earnings, but they wanted to put their own bookkeeper in to be sure that he didn't cheat on them. It was when he balked at that, that they, to show that they meant business, raided him. Their plan went wrong, because it was immediately apparent that we had been wrong and the police had been wrong. Heller was in fact violating the law.

So we insisted on charging him, although the man who had arrested him obviously did not want Heller prosecuted. He had to be chased down the street and caught by a policeman and brought back to the prosecutor's office. He said that he was "going to come back tomorrow," but of course he wasn't. So, to justify the arrest, he was compelled to sign a complaint against Heller, charging him with this illegal operation.

Heller was prosecuted. He was defended by a local lawyer at first, but he was displaced when it got to the superior court. He was defended there by a great friend of President Nixon's, a lawyer from Southern California, Murray Chotiner. Murray Chotiner was an excellent trial lawyer. There was quite a trial. Heller was convicted. But Alameda County had demonstrated that we would run our own business and that neither organized criminals nor Heller could operate here. We could see that we should have known about illegality of Heller's operation ahead of time,

Sherry: but there wasn't anything that looked like a racket going on at all. And nothing else but Heller's betting parlor was going on.

The Mendocino Prosecutions

Sherry: That brings us down to the summer of 1948 when, during the California District Attorneys' Convention at the Feather River Inn, we read in the newspapers that over in Mendocino County in Ukiah, the district attorney and the sheriff had arrested two or three of Howser's people as a result of an endeavor there to set up a slot machine protection racket. This produced all kinds of headlines.

Incidentally, whenever something like this happened, Howser would immediately say, "Well, they were doing their job right. I find nothing wrong. They are trying to enforce the law and this is just the under-world trying to tear down and embarrass my efforts to police the state." That kind of nonsense.

That resulted in grand jury indictments of his principal operator up there, a man by the name of Wiley Caddel. The case was tried in Ukiah.

At that time I was in the district attorney's office in Alameda County. It was after the war. I was then in charge of the criminal division, doing a great deal of trial work as well. Incidentally, I was at Feather River Inn when we heard the news of this astonishing thing at Ukiah, but I went back to business as usual until in the fall.

It was pretty late in the game -- it must have been about the end of September, or first of October -- when the district attorney of Mendocino County, James Busch, came to Ralph Hoyt, the district attorney of Alameda County, as the sheriff previously had come to Gleason, the sheriff of Alameda County, for manpower help under the mutual aid pact. A lot of Alameda County deputy sheriffs participated in the big round-up in Mendocino County, which resulted in arrests being made over I don't know how many hundreds of square miles of area, all the little resorts all over Mendocino County. They were very small, had slot

Sherry: machines in them. There again, slot machines in the resort communities were regarded as necessary to keep them in business. There was no payoff up there at all.

The blow-up occurred, just as in Alameda County, when the attorney general's people came in and wanted to extort, wanted to organize this thing, gain revenue from this operation. I don't know whether Busch asked for me as special prosecutor to come up and try the case. Jim had never tried a case of that dimension before. He felt pretty lost, and so I was nominated. I not only was nominated, but this was done at the request of the governor and Warren Olney also, which meant that I had to quit my job, which in those days was a somewhat awesome decision. I had a young family to support and a house to buy, having practically nothing left after the war.

I agreed to do it. Earl Warren is a very persuasive character, and so is Warren Olney. They agreed to pay me a fee, hire me as a lawyer to try the case. I went up there, and to my amazement, although the indictment had been returned in July or August, not an iota of work had been done on planning the case or interviewing witnesses or anything lese. Jim Busch had all he could do to run the business of the office. He had no assistant. He was out holding preliminary hearings and trying other kinds of cases and trying to carry on a private law practice too, which he was entitled to do because they were only paying him about \$200 a month to be district attorney.

I yelled for help, and Warren Olney sent Robinson, his investigator, up to help me. We went to work and traveled all over that county putting together the case and interviewing witnesses. The trial started about the first of November. It lasted thirty days. It ran, speaking of how courts operate today, from nine in the morning until twelve, from one of five, and then from seven til nine in the evening. The Judge, Lilburn Gibson, was quite a taskmaster. He said this extraordinary case was interrupting the routine of his court, and he wanted to get it disposed of as quickly as possible. It was a "great inconvenience to the jurors." This was because although some of the jurors came out of Ukiah where the courthouse was, others were commuting from Fort Bragg, Willits and

Sherry: various other remote areas. It's an enormous county.

Fry: And those roads, even today, are narrow and crooked.

Sherry: Yes, when you get off the highway, come in from a place called Branscombe, or some place like that, that is really hard.

We finished the case, which was covered by the newspapers extremely thoroughly. They all had their reporters up there. In that day I think there were four newspapers in San Francisco, the Examiner, the Chronicle, the News, and the Bulletin. So every day there were headlines -- it was the Watergate of its time -- for thirty days, in this area anyway. They were convicted; one evening about nine or ten o'clock the jury came in and all were convicted.

This was quite a blow to Howser. The evidence in the trial had clearly demonstrated what had been going on. It rather clearly showed the involvement of the attorney general's office, Lentz particularly, who should have been indicted, had I always thought, but the evidence wasn't known because of lack of investigation ahead of time.

I then went back to the district attorney's office, back to work. I received my fee, which was something I needed at the time. I was welcomed back by the district attorney's office. I think Coakley by then was district attorney; I think Ralph Hoyt went on the bench in September of that year.

Fry: Can I put in the record here what the newspapers say Howser's public response to this was? This clipping is in the Mary Ellen Leary papers in The Bancroft Library.

Sherry: Yes, go ahead.

Fry: Howser held his first press conference after this December 5th conviction on December 20, 1948. He said, "Buck Caddel, his former undercover man, is innocent despite his sentence of three to thirty-one years as an arch-conspirator. He declared that the attorney general's office would take charge of the appeal in Caddel's impending fight to reverse the conviction in the state appellate court." He failed to find "anything anomalous" in the attorney general's position

Fry: in this. He said he is "making no investigation of his chief investigator nor of Caddel's immediate superior, Walter Lentz, and plans no such inquiry. He will oppose appropriations for the crime commission, which was largely instrumental in uncovering the case." The article goes on to explain that "Caddel and two others were found guilty on two counts of conspiracy and three counts of bribery. The payoff was \$4.00 a week per machine for protection from Howser's agents."

Sherry: Well, there were a lot of other \$4.00 plus a percentage if they were over a certain amount.

Fry: This was a sliding scale?

Sherry: Yes. It depended upon the size of the establishment, because some of these machines were in little places like Jenner-by-the-Sea. There's a little cafe at the end of the line there where a few fisherman drift through, and there was a slot machine in there. It wouldn't earn more than \$25 or \$30 a week. So \$4 was a good percentage.

Incidentally, not only did he make the announcement that he was going to represent Caddel in the appeal, that he would take care of that, he also had his agents, during the trial, trying to block witnesses and hamper the prosecution while we were working in Mendocino County. Here we had our own guys spying on us! It's a unique experience in law enforcement when you have other law enforcement officers actively trying to cramp your style.

They tried to intimidate witnesses, to pay them off. They would come around and try to get them to talk themselves into inconsistent positions so they could be impeached and all that kind of thing.

Nobody knows who paid for the defense of these guys. They were ably defended by Joe Ball of Long Beach, who was a very fine man indeed. He was the chief defense counsel. There were a couple or others from Los Angeles. There was, I think, only one local defendant. He was represented by a lawyer from Petaluma by the name of Lounibos with whom I had a lot of trouble during the trial.

Anyhow, Howser had to think better of defending

Sherry: Caddel. It was his duty to do just precisely the opposite under the constitution and the law. We were concerned about that situation and right away we, at least I, and Jim Busch joined in the thing, requested permission to file an amicus curiae brief, a brief in support of the conviction ourselves, which was granted by the court of appeal in Sacramento.

Howser thought better of what he proposed to do, and he also discovered he had no way of controlling those good civil service lawyers in his office, who were doing everything they could to resist the illegalities which he was getting into. He usually let them run the civil side of the appeals part of the office; he left them alone; they were free to go on as they always did. His principle interest was fooling around in the law enforcement area in which they weren't particularly interested.

Cecil Mosbacher, now Judge Mosbacher, of the superior court here, and I worked all spring and early summer of 1949 on the amicus curiae brief. She was assigned to help me with the situation. No conflict occurred.

Dorothy Mayer, then deputy, now assistant attorney general in the office in Sacramento, filed a good, fine, strong brief. The defense lawyers' brief was not much. There wasn't much you could say. The evidence was too solid. There was a big issue about corroboration of an accomplice's testimony, a technical rule of evidence. This was really the only serious point raised.

We just got done, and I signed the brief, and went off to meet Mary Ellen Leary in Salt Lake City and get married, the summer of 1949.

The Commission at Work

Sherry: Then when I came back and started work again, Warren Olney invited me to join him as his assistant. That would be in 1949, judging by these reports. He was then beginning to strengthen his office. He was getting more investigators. So I went and worked there from the end of 1949 until about mid-1951, about two

Sherry: years, I guess.

When we got our office set up, we had more money. We had more people, and although we were set up to be a crime study group, it was perfectly obvious that all the good people in law enforcement looked on it as an operating agency, an agency which could help. Indeed, we did an awful lot of that. Our investigators were going out making investigations of what was continuing to go on with the Howser people, exposing the whole slot machine racket, naming names and all that kind of thing. We had that pretty exhaustively taken care of. It had some good effects in the legislature. We finally got a decent slot machine law which was enforceable. The one we had before just wasn't enforceable at all.

Fry: For things like that did you testify at legislative hearings?

Sherry: No, I was Warren Olney's assistant and that wouldn't have been appropriate for us to do as members of a governor's commission. We were charged very narrowly with the study reporting, but also doing a lot of active work as well. What we did, we reported. These reports were important for the impact they made on the legislature. This is far better than talking to the legislators, to get them to read something like this.

Fry: Your crime committee was the only investigative one, is that right? The others really were study committees.

Sherry: The others performed their studies. One with which I was associated briefly before I got into this thing, was a crime study commission on revision of the penal code, of all things. Then there was a crime study commission on the juvenile justice system. All they did was to look at the law and suggest reforms or changes in the written law.

Our job was to study and made a report on what lawbreakers were doing, and also, incidentally, if they were engaging in criminal conduct, or conduct bordering on the criminal, point out what was wrong. Among the things recommended was legislation.

Sherry: But meanwhile we were doing this fact-gathering kind of thing. We ran into things that we were able to build up and hand to the district attorneys and say, "Here's a case you can prosecute. Here are the witnesses. They are there. Robbie will help and you can try the cases." We started a number of prosecutions going. We put a little bit of stiffness in the backs of some weak-spined sheriffs and chiefs of police by telling them, "Sure you can do it. This is how." We told them how you try the case and that kind of thing, educated the district attorney as to what he could do.

In that respect we had considerable impact, but also the thing that made us most effective was the fact that we kept the spotlight on the mobsters all the time. They can't operate with that kind of thing happening. Then, of course, they go underground. The most elaborate dodge of that kind was the famous Guarantee Finance case in Los Angeles.

It was just about the time we were ready to fold up. We were just about all through. I wanted to get back to the district attorney's office, which I began to do, when I finished the report on the Los Angeles gangsters. I think then it must have been about 1951. I left. Ongoing at that moment, under Warren Olney's particular direction, was an inquiry into the Internal Revenue Department in San Francisco, where there was some evidence to indicate that the local racketeers were being helped out with respect to their income tax returns, concealing assets, etc., by some of the people in the Department of Internal Revenue. That broke and touched off an inquiry that went all the way to the top of the Internal Revenue Service before it was over. But I was out of the situation at that time.

Fry: I wondered what the next chapter was on that, because in this final report of 1950 you laid out in very clear fashion the cooperation of the Internal Revenue Service with these gamblers and all their fronts.

Sherry: We were all through at that time. That was the last report. I was back to the district attorney's office where I was for about six months when Pat Brown got elected as attorney general and asked me to come over and join him.

Fry: What happened to this connection between the underworld and the Internal Revenue Service?

Sherry: Warren Olney was working on that. He had just started to break that thing when I left. The first I heard about it was, I took a vacation driving through Santa Barbara, picked up a newspaper and got the big story. The information had finally been disclosed and the grand jury inquiry was underway. I think some people were indicted. The immediate reaction in the federal establishments in San Francisco was much like Howser. They were, first of all, highly annoyed that a state agency would be investigating a federal agency. This was very offensive to them. It's not generally done.

There were all kinds of efforts to stop the grand jury inquiry and that kind of thing. It was pretty hilarious there for awhile.

Fry: How did they try to stop the grand jury inquiry?

Sherry: The United States Attorney forbade his deputies from presenting the case to the grand jury, but one of them went ahead anyway and did it on a day that the newspapers call "Mad Thursday" or something like that. The jury stuck with it and returned indictments. This was very unseemly from the federal people's point of view.

Fry: The information that you gave on that in this report had not yet been acted on, and the people you named had yet to be processed through the courts.

Sherry: Of course that made a lot of headlines when it appeared, I recall. And then the papers got interested in what was going on over at Internal Revenue. They knew the collector, who was an old political figure in San Francisco, very well-known for a number of years. Knowing him, and knowing what was said, I think a lot of the reporters figured he was one of the ones, so they went after him.

That spread across the country. It was so unusual, a state investigating a federal office. Finally someone back east somewhere said, "The same thing has been going on here." That's when there was a later investigation; I don't remember the details, but there were some upheavals in the Internal Revenue Service as a result. Nothing like this has happened since that I know of.

- Fry: What ways were you hamstrung in your investigations in the crime commission? I understand there were some difficulties in just getting money to hire investigators.
- Sherry: No, we had all the money we needed. We didn't have adequate money as the thing was first conceived as a study group. The commissioners themselves weren't paid anything. They served for the good of the public. Warren Olney worked out of his private office. He was only working part time, because his position wasn't conceived as a full time job at all. I think Harold Robinson was hired full time right away -- no, he wasn't. He came in a little later. He was doing an accounting service up in Santa Rosa. Warren had quite a time persuading him to give up that business and come back to cops and robbers again. In any event, after the Ukiah trial, we had no trouble about money.
- Fry: I thought maybe it was more of a statutory problem. Dick McGee said something about having to get a foundation to come to your rescue.
- Sherry: That was about the time that they wanted to employ me. They had no supplemental funds and weren't about to get any of them. There was an effort at that time to get some foundation support to take care of my salary. Whether that became necessary or not, I don't know. It was at a time when more money couldn't very easily be appropriated otherwise. It was before the emergency had been foreseen. The commission just got swamped beginning about the end of 1948 with sheriffs coming in, policemen coming in, coming into San Francisco and telling us what was going on in their communities. It was too much for two men to handle.
- Warren needed somebody to help him, and Robbie needed somebody to help him. We got them, and I'm not aware now that we had any money problems. We seemed to have enough to get along. The problem was that we were not official. We didn't have the power of subpoena, we were not policemen. We were just private citizens. We obtained nothing by way of evidence except by persuasion or people volunteering information to us. So, in that respect it had problems that an ordinary criminal investigation doesn't have.
- Fry: I gathered from the report that you did manage to talk to witnesses and do some interrogation.

Sherry: Yes, sure. We would drive around the country, go in and talk to them. I was all over the place. I was in Northern California. We opened an office in Los Angeles. We had an investigator or two there, a secretary. We went down almost every other week to Los Angeles and worked out of that office.

Fry: When you first signed on with this, how long did you expect this to last? Did it have a cut-off date?

Sherry: It was indefinite, but it did have a cut-off date. I think you should find in some of these reports the length of time. I think it was appointed on a year-to-year basis. Or it might have been a two year-to-year basis, because the legislature was only meeting every other year during that time. But it did have a term and it had to end, unless the governor chose to extend it. If he desired to extend it, of course, he had to go to the legislature to get money to extend it. You may be sure that there were plenty of people in the legislature who wanted to shut us down, too.

Relations with the Legislature

Fry: I noticed, for instance, that the bill to outlaw the possession of slot machines, was killed in committee without any overt opposition to it. Does this indicate a lot of control?

Sherry: The gambler's lobby was as strong as it could possibly be. They had a former member of the assembly, Charles Lyon, as I recall his name, who represented the gambling interests.

Fry: Was he a Samish man?

Sherry: He probably was associated with Samish, but his own bit was the gamblers. They sustained him, and he represented the gamblers. He was a lawyer, a former assemblyman. I remember going into a hearing one night on one of our bills. I think it was later, when I was up there representing the Alameda County Peace Officers Association. I went into the senate hearing room. Here are about six or seven senators waiting for the hearing to

Sherry: commence. There's Lyon right down next to the chairman talking to him like a Dutch uncle. He was going to be the man that I was going to argue against for whatever bill it was, I don't recall.

Fry: He was an assemblyman at the time?

Sherry: No, he was a former assemblyman. Former members of the legislature have the privileges of the floor. They are still members of the club. So Lyon could go where others couldn't. It would be impermissible for me to do a thing like that, or for any other lobbyist or advocate. Lyon could walk right in on the middle of the floor in the middle of a session and look up his man. Nobody else had a chance to say, "Hey, listen to me first."

I remember after the end of that session, I ran into Lyon. He was a very charming, personable guy. It was in the lobby of a hotel. I was getting ready to return; everything was all over. He came up very cheerfully. He said, "You remember that night in the senate hearing room?" I said, "I sure do." "Well," he said, "you didn't even have to show up. That bill was dead all the time." I said, "I figured it was."

Thereafter he went too far, Charlie did, and got himself convicted for something, I don't recall what it was.

That was hard going. But ultimately the kinds of legislation we needed made the grade. I asked a number of fine people up there, Tom Caldecott, Ralph Brown to help -- there were some very fine people. They worked very hard.

Fry: Alameda County's Thomas Caldecott? He did introduce the successful bill in 1950.

Sherry: Ralph Brown was a very effective advocate for us. He is the author of the so-called Brown Act, the anti-secrecy law for governmental agencies.

Fry: I wonder what the connections here were with Samish. I read in Mary Ellen Leary's papers that there was an Otis P. Murph Company that made the console slot machines, and after this bill in the legislature failed the first time, they sold quite a number of them

Fry: throughout California. The address of their office was the same as the address of Samish's office in San Francisco.

Sherry: I didn't mention Samish because ordinarily, as a general rule, Samish didn't get into the law enforcement legislative battles at all. He wasn't interested in criminal law particularly or law enforcement. He looked in other directions, but since he was the most powerful of the lobbyists there, the others from time to time would enlist his support, as a trade perhaps. There's no doubt about the fact that there were times when he would exercise his influence.

However, our policy was never to be seen with him or talking to him. We stayed strictly away from Samish. That was the law enforcement side of the thing.

I remember a sheriff went up to Sacramento one time. He was lobbying for some kind of a bill having to do with working conditions and compensation for his deputies, a perfectly laudable, proper enterprise. I think I saw him after lunch one day, and he said, "It's been a tough fight but I've just been to see Samish, and Samish says he's on my side." I was absolutely shocked that one of our people even talked to him at that time.

But Samish did not get himself mixed up actively in that kind of business. He could see that people like Howser were fools and these other things were dangerous. There was no point in it. He was getting along well with his breweries, trucks, bus lines, and other interests -- why bother?

Fry: There was another thing that came up in early 1950. An initiative was circulated apparently to legalize gambling. Part of the money would go to pay higher old age pensions, and I think the pensioners groups was behind it. I wondered if you knew anything about it.

Sherry: That was dog racing, I guess, not gambling generally. They wanted to get greyhound racing back again. That wasn't too difficult, depending on how you feel about that kind of legislation, because if you were opposed to it you knew that you had the horse racing people on your side, and they had lots of money. So you had them competing with each other in that situation.

- Fry: Speaking of competition, in the 1950 gubernatorial campaign one of the campaign organizers for Jimmy Roosevelt told me that they were contacted by Nevada gambling interests and offered a very large sum for the campaign if they would keep gambling out of California. I wondered if in the same way you would get a lot of cooperation from Nevada gamblers who wanted you to keep gambling out of California.
- Sherry: No, nothing like that at all. They didn't care too much about that. It was not enough to bother them. They were pretty small in comparison with the way they operate now. But it is true, at least so far, the freely repeated stories, both in the press and in talk, to the effect that they had made contributions to the opponents of any kind of gambling legalization in California. And it's only natural that they would. But this was never overt, it was never apparent. You always had to assume it was true -- it wasn't denied, and that was just about the status of that. You will never know. Like the story you heard: somebody has offered money to oppose the legalization of gambling in California. In a day when there was no attempt whatever to have any sort of disclosure about campaign contributing at all, there would never be any way of discovering that.
- Fry: Of course he went on to say that Roosevelt's committee turned it down. I wondered at the time if this competition from the Nevada gamblers was an aid in keeping it out of California.
- Sherry: No, that didn't make any difference.

The Role of Governor Warren

- Fry: Could you spell out what Earl Warren's role was in this, how active he was?
- Sherry: He appointed this commission because he hoped that it could maintain the fight against organized crime. He was governor now, having left the attorney general's office, where he had been extremely active and a powerful force for carrying that constitutional mandate for securing equal law enforcement throughout the counties of California. That's in the law, in the constitution.

Sherry: He took that very seriously. As attorney general, he began holding his own meetings of police, sheriffs, district attorneys. This is institutionalized now and occurs on a regular schedule. It has been a very effective device for bringing these people together and giving them some kind of group solidarity -- which has the bad effect also of providing group bias. For example, they are absolutely united on opposition to the abolition of the death penalty. This comes through that kind of organization, the good or bad results, whatever you want to say. It has brought them together as a group and has given them a lot more independence. You pay something for that kind of thing as against Balkanized organization which the law ordinarily contemplates, where you don't have these statewide organizations. It gets over that kind of obstacle quite well.

In his attorney general days, Warren was a very powerful force indeed. Now he becomes governor. Ordinarily he would rely on his attorney general. That's the attorney general's responsibility. He soon became aware of the fact that he had a weak reed in Howser to lean on there. He got Warren Olney back again as trouble shooter and set up the crime commission.

The important thing in the Crime Study Commission on Organized Crime is the selection of Warren Olney as counsel, because Warren Olney ran it absolutely. We would have meetings of the commission, these distinguished gentlemen, about every month or so or every two months. We would meet in a hotel in San Francisco or at the Bohemian Club or something like that, and we would tell them what we were doing, giving them these funny names of the mobsters and that sort of thing. They just listened fascinated. "Great, fellows. Keep it up!" -- that kind of thing, but they didn't function as a commission.

Curiously enough, they did hold a meeting at one time, after the indictment in Ukiah when I was not attached to it. At this meeting, which was in Los Angeles, Lentz, or one of the people who was involved in the racket, appeared. Warren Olney was informing them then of what had happened in Mendocino, what the situation was. They had invited the attorney general to be present. He sent Lentz, or whoever it was.

Sherry: At the end of the meeting Admiral Standley inquired about one of the conspirators in the group, the man who ran up and down in the state collecting the money ("Chinese" something-or-other he was called, for reasons which I've never understood). He was a former policeman. Admiral Standley asked who he was. Lentz replies, "Oh, he was the bag man," not thinking He had replied quickly.

This was an important piece of evidence. It was perfectly admissible evidence, but by the time the trial got started Admiral Standley was way out in the far Pacific some place. He was flying around as ambassador, special envoy of the President, that kind of thing, for about the rest of his life. So we told the Navy Department in Washington that we needed Admiral Standley here for the commission. So they brought him all the way back from the Pacific. We had to wait two days for him, with the judge jumping up and down about this undue delay.

So Standley came back. The very interesting thing about this was that Standley was born in Ukiah. He was the favorite native son, ambassador to Russia, naval hero, etc., so that the judge just had to grant that delay. Everybody in town would have shot him if he hadn't waited for Standley to come! So Standley came, the returning conqueror. It brought people all in from the countryside. The hotels and the motels did a wonderful business for two or three days. When Standley appeared in the courtroom, the judge greeted him very graciously. Standley got on the witness stand. I interrogated him about the meeting, just asked him who he was. He was chairman of the commission. Did the commission have a meeting at such and such a time? It did. Who was present? Who was Lentz? Was that the man? Was he there? Did you have a conversation with him? What did he say? He said that so-and-so was the "bag man." "That's all, Admiral." The defense lawyer made no cross examination. So Standley was in court for about ten minutes, and out.

But of course all the newspapers had "Admiral Standley names bag man." "Bag man" got to be quite a word for us.

But Olney was running the show.

Fry: How did you and Olney divide up your duties?

Sherry: We didn't divide them up. We just shared them, that's all. We worked together or we worked separately. We had a man to do our writing for us. Stopping and sitting down to write what we had done was pretty hard for us.

We found it impossible enough, so that we made the mistake of hiring a guy who met a tragic end thereafter. He was on his uppers. He hadn't made it very well in the newspaper world, but he was a newspaper man who could write.

He wrote a report with our recommendations and that kind of thing, and about two days before we were to send it to the press -- it was just about ready to go -- the Los Angeles Times broke our recommendations, and it was just word-for-word what was in the report. He denied having tipped off the Times, but he was the only person who could have, and he was in Los Angeles at about the appropriate time. We had to let him go, which we did. Warren Olney looked at me and said, "Now you've got to write it." So we had to start and write it all over again. That's how I happened to write that report. I had to. I don't know why we went to all that trouble, because the results were substantially the same. I think I did a better job than the other guy did, but --

Fry: Did he take his manuscript with him when he left? Did you have to start from scratch?

Sherry: We had to take a different tack completely. I wanted to make it as different as possible from what the Times had said.

Fry: What was the impact of the Times leaking this two days ahead of time?

Sherry: Nothing. The Crime Study Commission on Organized Crime was going to recommend legislation, which it ultimately did, but in different words and in different order. But the body of the report itself was considerably different.

Fry: I wondered if you could elucidate a little bit on that early meeting between Warren Olney and Earl Warren and Howser, if you know anything about that.

Sherry: All I know is what Warren Olney told me. I wasn't there. He just sat there in Earl Warren's presence. Warren Olney told him everything he knew up to that time about the operations of the deputy director, as he was called -- Lentz, and his men -- what he had heard. He just outlined it. As he then expected, Howser appeared to be grateful to be informed, hadn't known about it, he said, and would take steps immediately to correct the situation. So Warren [Olney] and the governor assumed Howser would at least make some show at doing something. But he made no effort at all. I don't think there were any other meetings. There may have been; I don't know.

The Role of Attorney General Howser

Fry: Do you think that the Howser question instigated the formation of the whole crime commission idea with all of its committees?

Sherry: It was important, although the commission had been set up before Howser's activities or his people's activities had become known. I think in the preamble there is something said about the expected rise of crime as a result of the end of the war, particularly in the area of organized crime. Enough was known then about the wire services and the slots and all that sort of business. Just that alone would be adequate reason to set this up to study the situation and see whether any new legislation should be enacted in order to take care of it. But I can't say absolutely that one of the reasons was because Howser was the attorney general. But it's my guess that that was a strong motivating force.

Governor Warren had had experience with Howser when he [Warren] was attorney general, trying to enforce the law in Los Angeles County and running into Howser's active opposition and complete failure to cooperate.

Fry: When Howser got the Republican nomination in 1946, this could have been an indication that the attorney general's office might possibly be under a very weak person if he won the general election. Howser was known. There was no question about that. There was a meeting in 1946, right after the war, at Catalina Island, of the District Attorney's Association. The

Sherry: election primary was over. Earl Warren had been elected governor at the primary; he had been opposed by Kenny. (That's the campaign when Kenny traveled to Europe and Warren won both primaries.)

Howser was the host district attorney, and he was a new district attorney of course. On the deck on the steamship (which I see has been just restored to service) there was a cabin with a lot of merry voices in it. We looked in, and here's Bob Kenny and Earl Warren seated side by side. Kenny's term would expire, you see, at the end of December. He was still attorney general. He said, "Come on in, fellows, I'm celebrating my terminal leave," a word which all of us knew at that time. The two of them (arch rivals) got off the ferry on the other side where all of the people come to watch the boat come in, and walked off arm in arm, the first two off the boat.

This was post-war, and it was very difficult to buy liquor of any kind. You could buy maybe a bottle or two at a time. We were going to be down there for almost a week. Almost everybody had a bottle in his bag, to keep him going through the dry stretches. But when we got there, in our rooms everybody had a bottle of Scotch and a bottle of bourbon, and there was a big bouquet for the lady, "compliments of Frederick Howser, your host."

Well that could be obtained only through one source, and that was Arty Samish. That, and the conversation which spread around about Howser, how "This is going to be it. He's going to make it," they thought. There was a good deal of unhappiness among the district attorneys about this prospect. They knew what Howser was. Pat Brown was then running on a slate on the Democratic ticket that included governor and everything else, and Pat Brown as attorney general.

At that meeting -- Ralph Hoyt I know, was very active in this movement -- a group of the district attorneys talked to each other about, "Shouldn't we support Brown? Howser is no good at all, and Brown is district attorney of San Francisco, and shouldn't we go for Pat?"

At that time almost all of the district attorneys

Sherry: would have been Republicans, as were most state offices, in spite of the large Democratic registration. (Curious the way California votes, and the nation, for that matter, these days.) They didn't like the idea of Pat's being on a slate because it would be difficult for them to support Pat without being understood to be supporting everybody else on the Democratic slate. So they approached Pat and told him that he could have the support of the District Attorney's Association if he would split off from the slate and run independently. Then they would be all for him. Pat said, "It's too late, I've given my word. I can't now." So that fell by the wayside. He could have had the district attorney's support.

Fry: That's a very revealing story.

Sherry: Pat takes promises very seriously.

Fry: It also sheds a little light on the usual story that you read and hear about Earl Warren appointing the crime commission because he wanted to get Howser. Very simplistic.

Sherry: There was no "getting Howser" at all. We never knew the degree to which Howser was involved. I found that out later on, after it was all over. I didn't know what Caddel was doing, running around, going through all this mysterious intrigue and threatening people with "Sure, we can knock you down, and I am representing the attorney general," and all that kind of stuff.

Half way through the trial Lentz came up and got on the witness stand and made a mistake very helpful to us.

When the special agents, of which Caddel was one, travel, they have to make a daily report, where they're going, why, what the mission is, who they see, when and the time, and then their expenditures. At the end of every day they have to fill these darn things out.

We had Lentz subpoenaed, as chief of the office, to bring all of those records relating to Caddel with him. We had asked Howser to supply them. We had invited him. We needed them. We wanted them. He wouldn't respond. We just got no response at all. So finally we resorted to subpoena. We weren't in a position to subpoena at

Sherry: that time. We didn't know quite what we were going after.

Once the trial was started, and we knew what we were going to do, we said, "Let's subpoena it at this time." I think we gave Robbie the task of serving the subpoena to be sure he nailed his man. He did, and Lentz appeared. It was the first time I had ever seen him. He had all of these documents clutched under his arm.

I interrogated him about the practice. "You have with you now the documents of Mr. Caddel, daily reports covering the period of about two months in which his activity in Ukiah was important?" He said, "Yes." So I said, "May I look at one?" He took the top one off -- "Went to Long Beach, luncheon 75¢, etc." I looked at two or three of those. There was a big stack covering about sixty days.

I said, "Mr. Lentz, let me take a look at them. We can shorten up this cross examination if I can look at them just a moment, which I'm entitled to do."

So, reluctantly he handed them to me, and I immediately thumbed to the day I was interested in, the date Mr. Caddel had come up to Ukiah. I looked at it. Someone had made a crude effort to change the date and the place. It was a smudge. A child could tell that somebody had tried to write over it and change it from Ukiah to Santa Rosa. It just couldn't be done.

"Oh, Mr. Lentz, a very interesting thing I've discovered. Wouldn't you say that this document has been altered?" Now here was a policeman with experience. I knew he had only one answer.

He said, "Yes, someone has endeavored to alter that. It really does say Ukiah and that's the date." That put Caddel there. He'd denied it and he wasn't about to take the witness stand, so I needed some corroboration; the only other witness I had was the sheriff himself. So that daily report was a lifesaver; in effect, Caddel became a very important witness for us in that situation. There was nothing else -- Caddel couldn't be cross-examined. The thing was so

Sherry: crude. I immediately had it put in evidence. We made a lot of hay with that before the jury. It was a clumsy attempt to conceal, which it obviously was.

I never found out what went on in that situation at all until a year and a half, or two, after the event. Caddel was in prison. He was anxious to be released. He endeavored to get a pardon, which was turned down by the governor, whoever that was. Robbie and I got a call that Caddel was at Soledad and wanted to talk to us. He had something to say about that business that had happened. We went down to Soledad. The appointment was set up for evening. We didn't want to be observed going in, as we wanted to conceal our movements from newspaper people.

We had dinner in town, in Soledad, and went in about eight o'clock. (That's no place to have dinner. I'd just as soon starve.) We met Caddel in a private office there, late at night. He told us what had happened.

He [Caddel] was a Los Angeles policeman, as was the man known as "the bag man," whose name I can't recall. Lentz was a retired chief of police of Long Beach. I think he retired to take this post over with Howser. There was another man, Duke Bolger, who died during the course of his service there of acute alcoholism in the Cliff Hotel. He was a public relations man for Howser in the Howser campaign.

Caddel told me that he was out of the police department. He was retired. Actually it was one of these compulsory retirement things; he was guilty of some kind of misconduct and he was, rather early, retired after a disciplinary hearing. He was not a very bright man. He never got beyond patrolman. He never would qualify beyond that. He was married to a perfectly wonderful woman. His wife was just as faithful as she could be. She never missed a day of that trial. She stayed with him. But he was just kind of dumb.

I said, "The only thing I want to know is how did all of this happen?"

Caddel said, "I don't know how all of it happened. I was in the parking lot at the state building in Los Angeles, and I ran into Duke Bolger, a public relations guy. I said, 'Is there a chance of getting a job in the

Sherry: attorney general's office?" He [Caddel] needed some employment. He had known this character. There was some conversation. Bolger said, "I'll get in touch with you and I'll let you know."

The next thing he heard -- and how this was conveyed to him I don't know -- "You go to Mr. Lentz's office in the attorney general's headquarters and you do everything that he tells you to do. You're on. You've got a job."

Caddel went there and he did see Lentz. I don't know whether he had met Lentz before or not. Lentz explained to him that he would be a so-called undercover or special agent type, not on the regular payroll, not civil service. His duty would be to go around the state and to report to him personally. He was to report to Lentz all the time.

He said, "I never saw the attorney general except once, and that was after this interview with Lentz." Lentz said, "You'd better come in and meet the attorney general."

He said, "I walked in with Lentz." Lentz said, "Mr. Attorney General, here's the man who is going to be working with me in my office." That was all. It was the first and only time that he had ever laid eyes on Howser.

Then he disclosed that Lentz was the big operator. Lentz was the man who was running him and running the guy known as the "bag man." Lentz was apparently reporting directly to Bolger.

Caddel described what he did. I wanted particularly to know about the Mendocino thing. He said Lentz, called him in and said he wanted him to go to Mendocino and to call on Sheriff Broaddus. He's got some slot machines operating up there and we're going to knock them over." He said, "I went up, and I did just what Mr. Lentz told me. I went in and I said -- and he repeated the testimony of the trial, exactly what our witness had said. Incidentally, he gave the lie to Lentz. Lentz perjured himself in the course of his testimony.

Then he returned. He described this business --

Sherry: he was told to go some place, put in an appearance, deliver the threat, and then go someplace else. I said, "My heavens, didn't you know what the reason for this was?"

He said, "Oh, I figured they were raking some money off on it somewhere, but they never gave any of it to me." He was just paid \$200 a month, or whatever they gave him. He never got any of it. [The rake-off.] From what he said I think he was nothing more than a hireling. It looks to me as if Howser had made a deal with Lentz and Bolger: "We will support you, help you get elected, but when you get elected, let us run the special agent types. We'll take care of that. You've got a lot of stuff going on here."

It's very much like the Watergate thing. Did Howser know or didn't he? I can say with respect to Howser, with no hesitation at all, that he should have known, because he was told over and over again, in the press, by the governor, and by Warren Olney. He didn't do anything at all. In some way, I'm sure, Howser was under some sort of commitment to these guys. Whether he personally profited from it or not I have no idea. I don't know what the reason was why he would make a commitment like that. He didn't have to. He was attorney general. It's a well-paid job. You get elected a couple of times. You get retirement no matter what happens. Why he did it I don't know.

Fry: Howser tried to sue Drew Pearson for libel, for saying that he might not have been an angel in all this.

Sherry: Yes, there was a lawsuit, but he lost it.

Fry: Former attorney general Bob Kenny took Drew Pearson's case.

Sherry: There was a young man employed fulltime in that case.

Fry: George Arnold, the son-in-law of Pearson?

Sherry: Yes, he was his son-in-law, and his father was Thurman Arnold, the great lawyer. Incidentally George Arnold worked with the crime commission because he was encountering a lot of stuff, so he traded information.

Fry: Kenny mentions that George Arnold had collected information on Howser for a year. He had been sent out to work here. I wondered if he came to the commission.

- Sherry: Yes, we saw George frequently during those years.
- Fry: Looks like you had a good free investigator there.
- Sherry: Yes, he was working in his direction. There was a lot of stuff that he turned up with that was no use to him, but was useful to us, and vice versa. We had a good working relationship there.
- Fry: What did Howser do to the Bureau of Identification and Investigation in the attorney general's office?
- Sherry: He kind of isolated it. George Brereton was the chief of the bureau, but it was under Lentz actually; it was part of Lentz's responsibility. Brereton was just isolated. He was just left to be director of the bureau. Before that and after that, he always played a very active part in the law enforcement activities of the attorney general's office. But during the Howser administration he was just recording fingerprints, that's all.

One of the first things that Brown did that became my responsibility as chief assistant attorney general on the criminal side -- the first thing that I did was to take all of these people who had been floating around with Lentz, and assign them to the CII with Brereton, to be his people, responsible to him, because he was a good administrator and a good personnel director, so they were all told to move to Sacramento. This had the effect of resignations of several of them, whom we didn't want and whom we hoped would resign.

Those that were left went kicking and screaming up to Sacramento where George got them shaped up and trained them. He was able to evaluate them and he reported back which of the guys were pretty good, which would be helpful, could be used. Then we began making our assignments. We assigned a couple down to Los Angeles, a couple to San Francisco, some at Sacramento. We made a pretty good working organization out of it.

Strangely enough, there was a very young man that was in that bureau that Howser assigned as body-guard, if you can believe it, to Mickey Cohen when Mickey Cohen was getting shot at. He assigned

Sherry: one of these fellows, a fine-looking young man, who was very seriously wounded in one of the assassination attempts on Mickey Cohen (strangely enough just outside of "Sherry's Restaurant" in the Strip area in Hollywood). This guy was pretty badly hurt. He recovered. We were very suspicious of him. We shipped him up to Brereton, and he very soon came back, Brereton saying that he was a very fine young man and would make a good investigator. Which he did. I don't know whatever happened to him, but he was a good man.

Fry: Is that commonly done, that an attorney general can assign bodyguards to private citizens?

Sherry: No, I've never heard of it being done before or since.

Fry: I thought maybe I had missed something.

Sherry: No. That's a police department's job.

I think one or two of Cohen's chieftains were killed in that ambush, but not Mickey.

The Mafia and Organized Crime in California

Fry: Was this the Mafia in California? Your report doesn't mention anything about the Mafia.

Sherry: I don't think there is one. I don't believe in it. I think it's a fiction. There are isolated Italian groups in various parts of the urban areas, along the Northeast coast, and in Chicago, who engage in criminal conspiracies of one kind and another, but they are not beholden to anybody else. They are just individual groups. They know each other. They may exchange information and from time to time cooperate. But in a sense that this is a kind of corporate organization which has a board of directors and passes out orders all across the country, that's a lot of nonsense. That does not exist at all.

Fry: The next crime commission report made quite a big point of the Mafia and its activities.*

*See Final Report of the Special Crime Study Commission on Organized Crime, State of California, Sacramento, California, May 11, 1953.

Sherry: It may have, but nobody has ever identified the Mafia as such. The FBI has put together cases against a dozen or so of these Italian types out of the Boston area and New York. There's no question that they are involved in gangs, but these are largely local. I don't think there's any connection with the Genoveses and that crowd in Chicago and the people in Boston at all. The only thing they have in common is, for the most part, they are of Italian ancestry and from Sicily, where the Mafia originated.

Cohen was an ex-prize fighter who was pretty handy with his fists, and he was able to extort from people by beating them up and that kind of thing. He just set up a protection racket for only one thing and that was the bookmakers, hole-in-the-wall people, cigar store operators, that kind of thing, where horse race bets were taken.

For a set fee he would provide them with a kind of watch service; that is, the bookie would be phoned every half hour. If the phone was not answered it would be assumed that he had been arrested. An attorney with his habeus corpus all ready, and bail, would be dispatched to the jail. Many times the lawyer got there with his writ of habeus corpus before the prisoner did. It was a very efficient service. It would get the man out and back in business right away again. If there was someone who didn't comply, they wouldn't go in and beat him up and, more, he would simply be deprived of his wire service. He couldn't get any telephone service. So he came around quite quickly.

He had a clothing store, so-called, very fancy, very expensive clothing. I suppose a lot of people paid what was in those days an outrageous price, like \$300 for a man's suit. He didn't want the suit at all. He didn't get \$300 worth, but bought it.

He would invite the newspaper men out there for a conference. He'd say, "Fellows, take a tie, a Micky Cohen tie." They would walk over to the \$10 tie rack. He would say, "Take one. This is my Mickey Cohen souvenir." It was quite a badge of honor for a newspaperman to get a Mickey Cohen tie off the \$10 rack. It was probably worth a dollar.

Sherry: That was Mickey's thing, and Mickey ran afoul of the Dragna group. The Dragna group was another, you could call them a "Mafia" group, but a local Los Angeles group. At least they all had Italian names. They were in the same business. There was rivalry there. Some of their members got into drug importation from Mexico.

Fry: That was one of the things I wondered about, the drug problems at the time.

Sherry: When the commission was in business, the Dragnas were very much in business. One of their group, whose name I can't recollect, told the federal authorities all about it. He testified before the federal grand jury in Los Angeles. He was an Armenian [Abraham Davidian]. When he did this, of course, he marked himself for retaliation, typical Mafia-type retaliation, by the Dragna group with which he was associated. He was assassinated in the course of giving testimony before the grand jury about those operations.

During all of this time after he had told the story, while he was waiting for the grand jury, and during the grand jury investigation, he was carefully hidden by the FBI. This was a federal case. They had him down in Arizona and various other places. He was always with an FBI man. But he got tired of it.

One day after testifying he said, "Hell, I'm going to go home. I'm going to go to Fresno," where he came from. "I'm going to stay with my brother." One of our investigators, a nice young man, an ex-FBI character, happened to be around and said, "I'm going back to San Francisco through Fresno. I'll give you a ride back." This was a very, very foolish thing for him to have done. There was a terrible risk involved in that sort of a business. But he did and got away with it. Tom Judge, I think his name was. He got away with it. He left this man in Fresno and came on in. Warren Olney was just outraged that he could have taken a chance like that. There might have been an ambush any place along the road.

The man stayed in Fresno with his brother, who remained with him all the time except one noon hour when he stepped outside because he had run out of cigarettes. He was gone ten minutes. He came back, and the witness was dead with a bullet in his head right

Sherry: where he had been left sleeping. He was shot by a sniper through a window.

When that happened, everybody, the FBI, the local police, the sheriffs, our people, everybody went down there. They must have inspected every inch of ground and every room in that whole doggone community trying to get a clue as to who could have done it. They looked at all the airplane lists of incoming people a month back, all the registrations in the hotels. Everything possible was done. Absolutely no clue whatsoever. This was a professional killer. He never leaves a clue. It's very easy if you want to go out and kill somebody; you can do it and you can get away with it. Read the papers -- lots of people do get away with it.

You could describe the Dragna outfit as being a Mafia operation. Its operation, however, was confined to Southern California. It operated only in Los Angeles. Nor did it monopolize the business. It had a war with Cohen in which Cohen lost all of his henchmen, his leaders. His numbers were reduced to nothing. But they were not a Mafia. It's not true that there is one in California.

Organized Crime and Politics

Fry: In your report you describe how a tremendous amount of money and power that organized crime accumulates is brought to bear on political campaigns. I wondered who was it and what political elements besides Howser were most involved and might have profited the most.

Sherry: The only group that I think we really got on to, where we could name names and amounts of money, was the Kern County Music Association, which purported to be the operators of juke boxes. But really they were the operators of the slot machines as well as the juke boxes. They assessed themselves a lot of money which was transmitted to Howser through a lawyer who somehow or other was compelled to disclose that this happened.

But there was no way then of knowing, because

Sherry: there were no campaign contribution disclosure laws at all. As a matter of fact, that's one of the reasons we now have disclosure laws, inadequate as they may be. At least we have something now on the books. Now you have to go through shenanigans to beat the disclosure laws, as Watergate tells us. And you leave tracks when you do that.

But when you would see a relatively obscure or not politically potent person suddenly appearing in an election, let's say for the state legislature, you get suspicious. All of a sudden he is spending huge amounts of money. He has billboards, and everybody knows that billboards cost thousands of dollars a month. The big billboard in California came to be a kind of sign of corruption because of that. So for a long time candidates avoided them. "No billboards. I don't want any billboards." Lots of times, of course, billboards were given free to candidates by the sign companies, who were interested in legislation which would protect the billboards and not permit them to be knocked down. That was another way of taking care of things. You never find cash or checks or that kind of thing, but that's the way it's done.

Fry: Samish describes some of this too, how you can simply give the candidate the printing services that he needs or billboards or something like this.*

Sherry: These people are very, very clever indeed in how they operate. If they can get the money transmitted to the candidate, for example, then they get the candidate in the embarrassing position of: "Shall I return it? If I return it, will it be known? Here it is." It's easy to say, "Well, forget it. I'll take it. I didn't make any promises."

In Pat's [Brown's] second election campaign [for attorney general] it turned out after the campaign that his treasurer, who thereafter deserted him and became a Republican, had received a very large sum of money from a very prominent, wealthy liquor distributor in San Francisco. At the beginning of the campaign there were strict orders, "No donations are to be

*See Samish, Arthur H. and Thomas, Bob, The Secret Boss of California, Crown Publishers, Inc., New York, N.Y., 1971.

Sherry: taken from the liquor industry at all." It was just a blanket rule, so there wouldn't be any kinds of problems. The Samish thing was fresh in everybody's minds and Pat said, "The heck with it, we won't take it from anybody, not even my friends."

This one happened to be a personal friend, and it did not necessarily mean a corrupt donation at all. The treasurer took the money. It was a handsome sum for those days, \$6000 or \$7000, in that neighborhood. Of course, a newspaper found it out and published it. "Brown takes money from so-and-so." I never saw Pat more disturbed in all my life. He was thrown into a state of very deep shock. He got hold of his treasurer and said, "How could you do this to me?" "Well, I thought we needed the money, Pat." He had an agonizing time about that, but he said of course, "The money goes back right now, immediately." Which it did.

Then he called a press conference and said what happened, that it was without his permission and his knowledge and the money had been returned.

But that doesn't make any difference. The newspaper impression remains. That nasty little thing kept cropping up for about six or seven months. You'd go to a meeting, "Well how about the attorney general's taking the money from that man?" So it would all have to be explained all over again.

Fry: As I remember it, at that time a candidate only had to report the contributions that were made to him personally.

Sherry: Yes, that was one gambit. But it wasn't quite that simple. You didn't have to, for the primary election, report all of your contributions, only those received personally, and you had to report it under oath. In the general election you had to report everything, but it didn't have to be under oath. It was some crazy thing like that.

The Impact of the Crime Commission

Fry: Since you have continued in the criminal investigation

Fry: scene, can you evaluate the extent of organized crime now as it compares with California then? Was this an unusually large flare-up of organized crime?

Sherry: Yes, it was. They owned transcontinental telegraph lines. One of the people who was active in that big line almost secured financial control of Western Union. It was some chap in St. Louis. They had open gambling, horse parlors, betting parlors all over as described in the report.

We have very unrealistic gambling laws in my judgment today, but now there aren't any slot machines in California. I sure haven't seen one in this state anywhere since those days. That racket has gone. The horse race betting, the bookmaking, the off-track betting is now relatively small in scope. They are small operators. I've seen no evidence at all, except local groups who are "laying off" on covering their bets with gambling financiers, the banker types, but that's just a matter of underwriting betting agencies' money; that doesn't imply any local control or local corruption. But they get broken up regularly by the FBI and by the local police if they try interstate communications. They don't exist in open defiance of the law as they did then.

The volume they handle by way of betting is nothing on the order of what it used to be. These people are too small and unorganized. Organized crime exists when you can control about five or eight or ten of these groups; then you've got something very powerful. But this has not occurred so far as I know. I've never seen any evidence of it at all in recent years. But sometimes you'll see a policeman get up and make a big speech about the big problem of coping with organized crime. You can be darn sure he's looking for appropriations from somebody. He needs more equipment, more men. He's using the crime menace to get more money.

The Kefauver Committee and the Crime Commission

Fry: The Kefauver Committee came in about that time. I wonder how that related to the operations of the crime

Fry: commission?

Sherry: There was considerable cooperation. Their agents came out here. Those Kefauver hearings were held in San Francisco and were televised just the way the Watergate hearings are now being televised. The one they centered on in San Francisco was Samish. He was the star of the show. In calling witnesses before one of those committees there are just hours and days and months ahead of time spent in preparation by people ferreting out witnesses, taking their statements. This Watergate hearing is just taking an awful lot of people and hours and hours of work just for an hour or two of committee hearing.

We worked with their advance people, gave them a lot of information, filled them in, aided and assisted them, but we had no direct connection. All this was a United States Senate investigation, and there was no corresponding governmental unit in California. We watched the operation with considerable interest.

Fry: Was there any problem with the Kefauver people wanting access to your records, and your not wanting to grant access to your investigation records to them, because they contained unproven accusations?

Sherry: I don't remember anything like that specifically. I just don't remember. I had left the crime commission at that time and I was no longer associated with it. I would suspect, however, that the commission would have been very careful with the files. But -- "Did you have any interview with X? What did he say?" We'd say, "Well, you go and ask him. If he has anything to say he will give you the information. We can't show you our report."

The difficulty was that you were never sure how you were going to control that report if you gave it to somebody. Who else would he show it to? He might return it, but he might have shown it to somebody else, and you don't know. There you are. Your files may get compromised.

That's what is behind this business of L. Patrick Gray, former FBI head giving the President's people copies of files. Hoover was almost fanatical about his files. He didn't permit anybody to see them at all. He overdid it. But this is generally an investigator's

Sherry: basic rule of thumb, unless it's a very limited thing.

Say that Berkeley police have caught a robber, and he is also wanted for robbery in Oakland. Both cities will cooperate in their investigations and exchange information. They'll look at each other's records; but these are local policemen, there's a mutual exchange here.

But when you find someone coming in representing a political figure, and it's a political investigation and he wants a record, that's going too far. Or an officer, somebody that you don't know, from out of state or from some area of the state where you have no relations, again you cooperate as much as you possibly can, but usually you will be very cagey about the records.

Fry: Can information you get from interrogating people under oath be used as evidence later before a grand jury?

Sherry: No, but it could be leaked to a newspaper. It might be terribly damaging to somebody. Generally, it's not admissible evidence because of the hearsay rule.

Fry: How did your commission findings function in the later grand jury hearings in the various counties?

Sherry: Anything that would have been important was subject to subpoena, but a record of an interview normally is hearsay. It has no evidentiary value. It has only ordinary investigative value. The only kind of a record with evidentiary value in that context would be a written confession signed by someone. That's admissible under the rules of evidence, not a report of a conversation.

Fry: How were the results of your investigation, then, used by county grand juries?

Sherry: We told them what we found and who the witnesses were. We told them where to go. "Talk to that man down there. Stop making threatening noises at your chief of police and sit down and listen to what he has to say. Go to the district attorney, he can help you, you don't have to be suspicious." These people would get suspicious of each other.

- Sherry: Policemen, who are not elected people, tend to still have distrust about what district attorneys do sometimes. The district attorney is a political figure and a policeman isn't. Sometimes police are very careful what they tell district attorneys.
- Fry: It's about noon, time for lunch. Thanks for giving your time.
- Sherry: Not at all.

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